J. P. Stevens & Co., Inc. *and* Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC. Case 1-CA-13208

20 October 1983

DECISION AND ORDER

On 28 September 1981 the National Labor Relations Board issued an unpublished Order in which it granted the joint motion of the parties to modify the recommended Order and notice of the Administrative Law Judge. On 24 March 1982 the Board issued an unpublished Order in which it granted the joint motion of the Respondent and the Charging Party, which counsel for the General Counsel did not oppose, to modify the Board's Order of 28 September 1981.

Thereafter, on 13 October 1983, the parties entered into a Settlement Stipulation, subject to the approval of the Board, providing for the Board to enter an Order modifying its previous Orders in this case.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the Settlement Stipulation be approved.

The Board's Order of 28 September 1981, modifying the recommended Order and notice of the Administrative Law Judge, and the Board's Order of 24 March 1982, modifying its Order of 28 September 1981 are modified to delete paragraphs 2(d) through 2(l).

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge: Upon an unfair labor practice charge, and three amendments thereof, filed by Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC (the Union), the Regional Director for Region 1 issued a complaint and notice of hearing on November 7, 1977, against J.P. Stevens & Co., Inc. (the Company or Respondent), alleging that the Company had violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended (29 U.S.C. § 151, *et. seq.*) (the Act). The Company by its timely filed answer, denied commission of the alleged unlawful conduct. The hearing in this matter was held before me at New Milford, Connecticut, on March 13, 14, 15, 16, 17, 20, 28, 29, 30, and 31, 1978.[1]

The General Counsel amended the complaint on November 18, 1977, and thereafter on March 13, 1978, to allege additional violations of Section 8(a)(1) and (3) of the Act, and to urge imposition of a broad bargaining order. The Company has denied commission of these additional alleged violations. Upon the entire record in this case, consideration of the briefs filed by the General Counsel, the Charging Party, and the Company, and my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

From the pleadings, I find that J. P. Stevens & Co., Inc., is and has been at all times material herein, a Delaware corporation with a textile plant at New Milford, Connecticut, where it manufactures, sells, and distributes textile products. In the course and conduct of its business, the Company annually manufactures, sells, and ships directly from its New Milford plant finished products valued in excess of $50,000 to points outside of Connecticut. Further, the Company annually purchases and receives at its New Milford plant, goods and materials valued in excess of $50,000 annually directly from points located outside of Connecticut.

The Company concedes, and I find from the foregoing data, that the Company is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Company admits, and I find, that Amalgamated Clothing and Textile Workers, AFL-CIO-CLC, is and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*[2] *and Issues*

In April 1977,[3] Burton Bradford, who was then employed at the Company's New Milford plant, contacted the Union regarding the possibility of organizing the employees at that plant. In May, Bradford met with representatives of the Union, discussed the possibility of organizing his fellow employees, and received from them authorization cards and union literature.

During the second week of May 1977, the Union's literature and authorization cards appeared among the Company's New Milford plant employees. By June 15, the Union had received over 40 signed authorization cards from employee Bradford, and 7 or 8 more from employee Richard Peck. The Union was satisfied that all were signed by the Company's New Milford employees.

On Sunday, June 12, the Union conducted a meeting with a group of the Company's employees, at nearby Harry Brook Park. During this meeting the Union prepared a petition and solicited signatures to evidence support for its organizing effort among the Company's New Milford plant production and maintenance employees. By its letter to the Company dated June 20 and received 2 days later, the Union demanded bargaining and recognition as the exclusive collective-bargaining representa-

[1] On March 31, 1978, I adjourned the hearing in this matter, *sine die*, to permit the Company to search its records for additional evidence. Thereafter, on October 20, 1978, I issued an order closing the hearing as of that date, granting the Company's motion to withdraw its exhibits 23(a) through and including 23(j), and denying the General Counsel's request to reopen the record.

[2] The background facts are not in dispute.

[3] Unless otherwise stated, all dates refer to 1977.

tive of the Company's New Milford plant employees. By letter of June 30, the Company rejected the Union's demands.

The amended complaint alleges, and the amended answer denies, that the Company in opposing the Union's organizing efforts violated Section 8(a)(1) of the Act by: (a) maintaining an overly broad no-distribution rule; (b) warning employees that if they signed union cards they could be called into court to testify; (c) warning employees that because they were engaged in union activity the Company would engage in illegal activity against them; (d) coercively interrogating employees about their union sentiments and about the union sentiments of other employees; (e) threatening an employee with discharge because the employee engaged in union activity; (f) interrogating employees about their union activity and union activity of other employees; (g) threatening an employee with plant closure if the Union succeeded in organizing the Company's New Milford plant; (h) warning an employee that the relationship between him and his supervisor would change if the Union succeeded in organizing the Company's New Milford plant; (i) withholding a benefit that had been previously granted to an employee; (j) threatening an employee with a reprisal because he was a leading union activist; (k) telling employees that unionization could bring problems; (l) sponsoring and directing the drafting and distribution by employees of antiunion materials and literature; (m) granting employees the option of split vacation check for the expressed purpose of restraining and interfering with employees' exercise of their rights to support the Union; (n) threatening to discipline employees because of their union activity; and (o) harassing an employee because of his union activity.

Further issues presented here are whether the Company also violated Section 8(a)(3) and (1) of the Act by: (a) discharging employee Ronald MacKenzie because he supported the Union; (b) reprimanding employee Lester Nephew because of his support for the Union; and (c) changing the working conditions of employees Lester Nephew and Sidney Turner because of their union activity.

I must also consider whether by refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of an appropriate unit of the New Milford plant's production and maintenance employees, the Company violated Section 8(a)(5) and (1) of the Act.

B. *Interference, Restraint, and Coercion*

From late 1975 until February 22, 1978, the Company employee handbook for its New Milford plant contained the following rule:

> Except by expressed permission of management, there shall be no distribution of literature, of any nature, in the plant.

However, on August 1, 1977, the Company posted a notice to employees at the New Milford plant stating *inter alia:*

> Distribution of literature should take place only in nonworking [sic] areas and at a time when the distributor is not supposed to be actually working (for example—break or lunch time).
>
> As in the past no prior approval is neccessary for an employee to engage in these extra curricular activities in a manner which does not interfere with his/her [sic] job.

The Company kept this notice posted for approximately 1 week after which it was taken down.

In 1977, John Kyle, the manager of the Company's New Milford plant, and another supervisor cautioned two employees against distributing antiunion literature in plant work areas. No other instances of enforcement of that rule appear in the record.

Under settled law, the quoted proscription contained in the Company's employee handbook was presumptively invalid. *American Cast Iron Pipe Co.*, 234 NLRB 1126, 1131 (1978). For, absent special circumstances, an employer must provide his employees with the right to distribute literature on plant premises subject only to the restriction that it be done in nonworking areas and during nonworking time. *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615, 621 (1962).

The presumption of invalidity which attaches to the Company's employee handbook rule would be overcome by a showing that such a broad structure was necessary "in order to 'maintain production or discipline.'" *Stoddard-Quirk Mfg. Co., supra*, 138 NLRB at 621–622, quoting from *NLRB v. Babcock & Wilcox Corp.*, 351 U.S. 105, 113 (1956). Accord: *United States Steel Corp.*, 223 NLRB 1246, 1248 (1976), enfd. 547 F.2d 1166 (3d Cir. 1976). However, the Company has made no such showing here.

Instead, the Company seeks to avoid a finding of violation by the showing that only two employees were warned of the rule and that thereafter a company notice posted for 1 week removed the coercive effect of the offending rule. Neither excuse merits acceptance. The short answer to the Company's argument is that the continued existence of the unlawfully broad no-distribution rule in its employee handbook until February 22, 1978, was likely to "cause [employees] to refrain from exercising their statutory rights . . . even if interpreted lawfully by the employer in practice." *Solo Cup Co.*, 144 NLRB 1481, 1482 (1963). Accord: *NLRB v. Beverage Air Co.*, 402 F.2d 411, 419 (4th Cir. 1968). Accordingly, I find that rule in the Company's employee handbook until February 22, 1978, violated Section 8(a)(1) of the Act.

On May 11, 12, and 13, 1977, the Company's New Milford plant manager, John Kyle, having become aware of the union campaign, held meetings with groups of his employees at which he expressed the Company's views regarding union representation. The Company provided Kyle with prepared remarks which he used as a guide. Among these remarks were the following:

> The Union doesn't want a secret ballot election. They would prefer for you to be exposed only to their sales tactics and promises, and would try to get into this plant based on these authorization

> cards. If the Union tries this tactic, *everyone who signs a card could be called into court to testify.* At our Carter-Holly plants in Wallace, North Carolina, the employees voted against [514–404] the Union in February 1975. Now, two years later, all employees who sign cards will be called into court as the Union tries to get their defeat in the election thrown out, and tries to get in based on the cards. It could be a long and drawn out procedure before the testimony is finished and a decision reached. [Emphasis supplied.]

Kyle did not recite the quoted paragraph verbatim, instead, he told the assembled employees in substance that company employees in the south who had signed authorization cards and were no longer working for the Company were being called to testify in court hearings. Kyle also pointed out that those called to testify regarding their signature on authorization cards in court proceedings were losing time from their jobs. Kyle pointed out that such experiences might well befall the New Milford employees if they signed union authorization cards.[4] Given the unfair labor practices found below, an employee listening to Plant Manger Kyle was likely to infer that the Company would learn at a trial that he or she had signed a union card, and retaliate. I find therefore, that by these remarks the Company violated Section 8(a)(1) of the Act. *Lundy Packing Co.*, 223 NLRB 139 (1976); *L. S. Ayres & Co.*, 221 NLRB 1344 (1976).

On or about May 11, Shift Superintendent Charles Brissett, an admitted supervisor, told employees Conrad D'Elia and Burton Bradford that he was about to begin a 2-week vacation. He then added that he was glad to be going on vacation because "they" were going to do things that he believed were illegal. When employees Bradford and D'Elia pressed Brissett for an explanation, he changed the topic of the conversation.[5]

Examined it its setting, Brissett's remark that he believed that "they" were going to do things that were illegal, loses its apparent ambiguity. Indeed, there is ample evidence to support the contention that employees would understand the implied threat. The incipient union, Plant Manager Kyle's antiunion activity among the employees, talks, and the Company's history of unfair labor practices[6] when confronted with such activity gave Bissett's remark sinister meaning. For, New Milford plant employees were likely to assume that by "they" Brissett meant the Company. Employees were also likely to infer that his position as a supervisor gave him access to the Company's plans to combat the Union.

In sum, to the employees present, Brissett's remark would sound the warning that the Company would punish, within the next 2 weeks, employees who supported the Union. I find that by this implied threat the Company interfered with, coerced, and restrained its employees in the exercise of their rights under Section 7 of the Act[7] to support the Union, and this violated Section 8(a)(1) of the Act.

In mid-June, after Brissett returned from his vacation, he again talked to Bradford regarding the Union. Brissett warned that "if the Union came in the mill would close down." When Bradford pressed for an explanation, Brissett told him of an earlier instance of closure at the same location. Bradford reminded Brissett that in the earlier instance the plant was a bleachery under other management. Brissett responded with "that's what they do in the South," and ended the conversation.[8]

Bradford's belief that Brissett regretted having made the threat and that the two were engaged in a friendly exchange at the time that the threat was made does not militate against the finding that the threat violated Section 8(a)(1) of the Act. A threat of plant closure made by a supervisor is no less coercive because he is a friend of the employee to whom the threat is aimed. Nor is the threat less coercive because a supervisor evidences regret in having issued the threat. For an employee hearing such remarks from a supervisor is likely to conclude that these remarks reflect the sentiment of the supervisor's superiors in the employer's management. See *Isaacson-Carrico Mfg. Co.*, 200 NLRB 788 (1972); *Witchita Eagle Publishing Co.*, 199 NLRB 360, 370 (1972).

Within the week prior to the Union's meeting of June 12 with company employees at Harry Brook Park, the Company's product and process development manager at New Milford, Glen Reynolds, an admitted supervisor asked employee Lester Nephew if he was "for the Union." Nephew said he was. Reynolds went on to ask if New Milford plant employees Bob Miner, Floyd Williams, and Bill Baucom belonged to the Union. Nephew refused to divulge the requested information. Reynolds also asked Nephew if he were going to the union meeting June 12, and whether employees Miner, Williams, and Baucom were also going to the meeting. Nephew

[4] My findings regarding Kyle's remark are based on the uncontradicted testimony of employees Conrad D'Elia and James Dunleavy.

[5] Charles Brisset denied having any conversation with any employees in which he told them that illegal things would happen. However, on cross-examination Brissett admitted having talked to employee Bradford about the Union but could not remember what was said. Indeed, Brissett maintained that the conversations were: "Too long ago." In contrast to Brissett's uncertainty, Bradford and D'Elia appeared sure as they testified about Brissett's remarks. Further, their versions of the conversation appeared to follow a logical course. I also note in assessing their testimony that both D'Elia and Bradford were employed at the Company's New Milford plant at the time they testified.

[6] *J.P. Stevens & Co.*, 247 NLRB 420 (1980).

[7] That section of the Act reads:

> Sec. 7 Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

[8] Brissett denied making the threat attributed to him by Bradford. However, as pointed out in an earlier footnote, Brissett admitted that he talked about the Union to Bradford but could not remember the substance of their conversation. Brissett also conceded that he might have talked to Bradford about the bleachery. However, he also stated that he could not othewise remember the substance of his conversation about the Union with Bradford.

In contrast, Bradford appeared certain as to his recollection of Brissett's remarks regarding the possible closure of the New Milford plant. Accordingly, I have credited Bradford's testimony regarding Brissett's remarks.

said he would attend the meeting, but refused to disclose the intentions of the other three employees. On the Monday following the meeting at Harry Brook Park, Reynolds asked employee Nephew if he had attended and who was there. Nephew said he had gone to the meeting but did not answer the rest of Reynolds' inquiry.[9] I find that Reynolds' repeated interrogation of Nephew regarding the union sentiments and activity of himself and his fellow employees, coming in the context of the Company's manifestations of union animus, was unlawfully coercive. I find therefore that by this interrogation, Respondent violated Section 8(a)(1) of the Act.

On direct examination, Nephew testified that on or about June 20 Reynolds warned him that if a union came into the plant he and Nephew "wouldn't work so good together." On cross-examination, Nephew testified that he did not remember that Reynolds made that remark. This repudiation of the earlier testimony left unsupported the amended complaint's allegation at paragraph 8(i) that Reynolds threatened Nephew with a change in their relationship if the Union "got in." Accordingly, I shall recommend dismissal of that allegation.

However, I find from Nephew's testimony that on or about June 20, Reynolds warned him that if the Union came in at the New Milford plant, the Company might close that facility, as it had a plant at High Point, North Carolina, making the same product. I find that by this threat of plant closure the Company violated Section 8(a)(1) of the Act.

A third encounter, in late June 1977, is alleged as a further violation of Section 8(a)(1) of the Act. In that incident, Reynolds came upon Nephew at the plant and asked him "What is the matter? I hear one of your bigshot union card pushers is quitting." Nephew had just heard that employee Bradford intended to quit. Reynolds continued, stating in substance that, if he were manager of the New Milford plant, he would have arranged to have sugar poured into that employee's gas tank. By this remark, Reynolds strongly indicated that his hostility toward employees active in support of the Union would cause him to inflict harm on them. By this implied threat of reprisals, the Company again violated Section 8(a)(1) of the Act.[10]

Early in June 1977, Nephew noticed that the production line was making some trial material which the Company would ultimately discard. Nephew mentioned his observation to Reynolds and aksed that the trial material be given to him. On prior occasions the Company had granted similar requests by Nephew. This time, Reynolds said he would consider Nephew's request.

Later in June, after Nephew's and Reynolds' exchanges regarding union activity and sentiment, Nephew noted that the trial material was about to be discarded. When Nephew asked for the material, Reynolds replied that "things weren't like they use to be" and that Nephew was "on the other side of the fence now." Reynolds added, however, that Nephew should check back with him later. Approximately a week after this encounter Supervisor Charles Abbott authorized Nephew to take the trial material.

I find that Reynolds' second response to Nephew's request for the trial material implied hostility toward Nephew's apparent union adherence and implied that the Company would not accord Nephew the benefit which he had previously received, in reprisal for his admitted union adherence.

Granted, Supervisor Reynolds did not even mention the word "union" or Nephew's union adherence in this conversation. However, Reynolds' remarks that "things weren't like they use to be" and that Nephew was "on the other side of the fence now" came soon after Reynolds had learned of Nephew's prior union sentiment and attendance at a union meeting. In this context, Reynolds' second response to Nephew's request for trial material constituted an implied threat to withhold the material because Nephew was a union adherent. I find therefore that by Reynolds' second response to Nephew's request, the Company violated Section 8(a)(1) of the Act.

On June 9, 1977, employee Lee Rothstein engaged in discussion with Charles Hills, personnel manager at the New Milford plant. In the course of this exchange, Hills asked Rothstein why he had signed a union authorization card and[11] Rothstein answered that he had signed thinking that it would give the workers "some protection" and "benefits." Rothstein asked Hills why the Company had not fired him earlier for walking out of the plant before the end of his shift and yet had fired employee Ronald Mackenzie for the same conduct. Hills answered that Respondent had erred in Rothstein's case. Hills added that if he wished to fire an employee he could use the pretense of insubordination. As an example, he asserted that if he came into the quality control laboratory where Rothstein was employed, he could instruct Rothstein to remain stationary, leave the lab, return, instruct Rothstein to move, and at that point terminate Rothstein on grounds of insubordination. Hills remarked that it would be his word against Rothstein in such a situation. Hills concluded asserting his authority to transfer Rothstein from the quality control laboratory to the production line.[12]

[9] Reynolds denied asking Nephew if he and other employees expected to attend a union meeting. However, Reynolds left undenied Nephew's testimony that Reynolds questioned him about his union sentiments, the union sentiments of other employees, and about attendance at the union meeting. As Nephew, who was a company employee when he testified, impressed me as the more frank and forthright witness, I have credited him rather than Reynolds, wherever their testimony raised issues of credulity here and at other points in my Decision.

[10] That Nephew and Reynolds enjoyed an amicable relationship did not mitigate the coercive impact of Reynolds' threats and interrogation. *Isaacson-Carico Mfg. Co.*, supra.

[11] Earlier that same evening Rothstein told Hills that he had signed a union card.

[12] Hills denied having any conversation with Rothstein on the night of June 9, 1977. Instead, according to Hills, he and Rothstein had a conversation later in June 1977, at which he did not ask Rothstein about signing a union card. However Hills largely corrborated Rothstein's version of their discussion regarding the Company's failure to terminate him for walking off the job. Of the two, Rothstein appeared to be the more conscientious about filling in the whole story. In contrast, Hills was not concerned about picking exact dates or giving full accounts of conversations. Further, at the time he testified Rothstein was employed at the Company's New Milford plant. In sum, of the two, Rothstein impressed me as being the more reliable witness. I have therefore credited his testimony wherever it conflicted with Hills' regarding their conversation, which I find occurred on or about June 9, 1977.

In the context of the Company's many manifestations of union animus both before and after the incident under scrutiny, I find that Hills questioning of Rothstein regarding the latter's reasons for supporting the Union was coercive interrogation. I also find, therefore that by this interrogation the Company violated Section 8(a)(1) of the Act.

Hills' remarks to the effect that he could terminate employees on a pretext came in the wake of Rothstein's admission that he was a union supporter. They also were part of a discussion of the discharge of Ronald Mackenzie which, as found later in this Decision, violated Section 8(a)(3) and (1) of the Act. In these circumstances, Hills' express reference to pretextual discharge was a warning that a union supporter such as Rothstein was a likely target of the punishment which befell Mackenzie, and which might well have happened to Rothstein, but for the Company's error. I also find, therefore, that Hills' warning also violated Section 8(a)(1) of the Act.

On June 30, 1977, and for 2 weeks thereafter, the Company posted a notice to employees at its New Milford, Connecticut, plant. The notice included the following sentence:

> We believe that before you are subjected to unionization and the problems that could bring, you should be allowed to make up your own minds about this union, and have a chance to vote in a free election.

The General Counsel and the Charging Party urge that the words "unionization and the problems that could bring" amount to a threat of reprisal by the Company. The Company argues that the entire notice, including the extracted language, comes within the protection of Section 8(c) of the Act, which provides:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

The Company also points out that its opinion as stated in the quoted language is supported by the problems unionization has in fact imposed on employees. These include "strikes, internal union regulations and discipline." In sum, argues the Company, by its reference to "problems," it was merely calling attention to possible undesirable aspects of unionization which the employee should consider before making up his or her mind. (Resp. Br. 46.) I do not agree that the quoted language was protected by Section 8(c) of the Act.

The Board has found that an antiunion notice to employees, posted by the Company, which warned simply that signing a union authorization card could have "serious consequences," violated Section 8(a)(1) of the Act. *J. P. Stevens & Co.*, 245 NLRB 198, 218 (1979). Here, as in the cited case, the language under scrutiny must be read in the context in which it appeared. Here employees were free to consider "problems" in the context of Kyle's unlawful warning about signing authorization cards and the other unlawful threats found elsewhere in this and other Board decisions involving the Company. Thus, here, as in the cited case, the meaning of "problems" must be read in a context of repeated unfair labor practices. In such circumstances, employees reading the Company's message were apt to conclude that the Company was a possible source of "problems." Accordingly, I find that by warning of the "problems" which would come from unionization, the Company impliedly was threatening its employees with reprisals and violated Section 8(a)(1) of the Act. *J. P. Stevens & Co., supra*, 245 NLRB 198, 218.

Late on an evening during the last week of May or the first week of June 1977, Company Supervisors Stanley Walega and Merle Jandreau met in an office at the New Milford plant with employees John Myer, Harry Sommerville, John Foshay, and Mark Halliwell. Also present was attorney Eric C. Schweitzer of counsel for the Company.[13] After attorney Schweitzer, Supervisors Walega and Jandreau and employees Myer, Sommerville, Foshay, and Halliwell were together in the office for approximately 20 minutes, the four employees left, Schweitzer remained until about 1 a.m. and then left. During the remainder of the night, the four employees met from time to time in the same office with Supervisor Merle Jandreau.

The next week, on Monday night, Lee Rothstein observed employees John Meyer, John Foshay, and Harry Sommerville picking out employee's timecards, scrutinizing them and writing on a legal size yellow pad. Supervisor Merle Jandreau came to the timecard rack, spoke to the three employees for a few minutes, and then went to his office. That same evening, Meyer was at a second timecard rack with a legal pad. The following evening, employee Sommerville began soliciting signatures on a petition announcing that the undersigned employees wanted their signed union authorization cards returned. At this time, Sommerville told employee Richard Farrell that the antiunion committee had attorneys to assist them, that it was "no rinky-dink outfit," and that the committee had as much power as the Union.

Soon after Sommerville had begun soliciting signatures on his antiunion petition, Lee Rothstein observed him sitting in Supervisor Jandreau's office looking to Jandreau and making notations on some paper. Thereafter, Rothstein observed meetings between Jandreau and one or more of the four employees originally observed with Jandreau, Walega, and Schweitzer in late May or early

[13] Rothstein testified that he observed this meeting and that in addition to the supervisors and employees there was a stranger present. At the hearing, Rothstein identified the stranger as Louis T. Smoak, Esq., of counsel for the Company. However, attorney Smoak denied ever meeting any hourly employees at the New Milford plant. Further, he denied ever being at the New Milford plant after 4 p.m. during late May or early June 1977. The record does not show how far Rothstein was from the stranger or how attentive Rothstein was at that point. In the face of Smoak's persuasive testimony and my doubts regarding Rothstein's opportunity to see the stranger at the the time of this meeting, I have credited Smoak's testimony. Aside from this no substantial issues of credibility were raised by the testimony regarding the allegation that the company sponsored antiunion petitions and propaganda.

June 1977. On occasion Rothstein would walk in on a meeting and everyone would become silent.

On June 10, Rothstein complained to Kyle about Sommerville and Meyers going through employees' timecards and about the disruption caused by solicitation of signatures on the antiunion petition during worktime. Kyle said he would "take care of it."

In July, employee James Dunleavy observed employees Meyers and Sommerville distributing antiunion leaflets to production employees during work time, on the plant's production line. Dunleavy complained to Fisher who said he would look into the matter. D'Elia complained to Kyle about the same incident. Kyle responded that he had heard a contrary report.

Sommerville received inspiration for his antiunion campaign from an advertisement he came upon in a textile magazine. He began his antiunion activity after observing the circulation of union authorization cards at the plant. Sommerville admitted circulating antiunion petitions at the plant among the employees. I also find from Sommerville's testimony that he obtained some of his antiunion material from "a Mr. Quick in North Carolina."[14]

Sommerville testified credibly that he had met attorney Schweitzer sometime in the summer of 1977. Sommerville's testimony regarding the circumstances of that meeting substantially agreed with the credited testimony of employee Lee Rothstein. Sommerville also credibly denied receiving any assistance from the Company or its attorneys in his antiunion campaign. Thus, notwithstanding the suspicious circumstances painted by the General Counsel's witnesses, I find that the evidence did not support the complaint allegations that the Company "sponsored and directed employee anti-untion materials and literature." I shall therefore recommend dismissal of that allegation.

On April 21, 1977, Plant Manager Kyle posted a notice to the New Milford plant employees on the subject of "Plant Vacation For July 4th Holiday." The notice, a restatement of a longstanding policy at the New Milford plant, declared:

> The plant will close operations for vacation at 7:00AM on Saturday July 2, 1977 and resume operation at 7:00AM on Monday July 11, 1977. All employees who have vacation time coming will be expected to take it according to the following schedule:
>
> 1. *Employees with TWO or more weeks vacation*
>
> One week during July 4th shutdown. Remaining vacation to be scheduled with their supervisor. Since the holiday falls within the week, you will receive one extra day's pay for the holiday.
>
> 2. *Employees with ONE week vacation*
>
> On vacation during July 4th shutdown. Since the holiday falls within the week you will receive one extra days pay for the holiday.
>
> *ALL* vacation pay will be paid on July 1, 1977.

Under the Company's practice as of April 21, 1977, employees received their vacation pay annually on July 1 in a lump sum, regardless of when each employee intended to take his or her vacation. This policy was the subject of complaint by New Milford employees including Floyd Williams at a meeting with Personnel Manager Charles Hills, and Production Superintendent Charles E. Abbott, Jr., in January 1976. However, the Company persisted in its vacation policy in 1976.

On or about July 1, 1977, Personnel Manager Hills announced a change in the Company's vacation policy at New Milford, to take effect as of the July 1977 shutdown. Employees would now have the option of taking all of their vacation pay in a lump sum as in the past, or they could take part of their vacation pay for immediate use and leave the rest in reserve to cover whatever remaining vacation period they were entitled to during the rest of the year.

The Company's announcement of the change in vacation policy came less than 3 weeks after the Union's meeting with company employees at Harry Brook Park and less than 2 weeks after the Union's request for recognition and bargaining as the exclusive representative of the New Milford plant employees. By thus "emphasiz[ing] to [its] employees that there is no necessity for a collective bargaining agent" (*NLRB v. Bailey Co.*, 180 F.2d 278, 279 (6th Cir. 1950)), the Company unlawfully interfered with their right of self-organization. The Company's hostility toward the Union at New Milford, as shown by the unlawful conduct found elsewhere in this decision, the timing of the announcement, and the Company's failure to explain its actions on the basis of legitimate business conditions, persuade me that the Company was prompted by an unlawful purpose. The announcement and granting of the change in vacation policy while the Union was attempting to organize the New Milford plant was designed to suggest to the New Milford plant employees "that the sources of benefits now conferred is also the source from which future benefits must flow and which may dry up if not obliged." *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964). In sum, I find that in changing its vacation policy on or about July 1, 1977, the Company was motivated by an intent to interfere with its employees' freedom to decide if they wanted the Union to represent them, and thereby violated Section 8(a)(1) of the Act.

On Friday, February 10, 1978, quality control employee Lee Rothstein received authorization to work overtime on the evening of February 13, 1978, prior to his regular shift. Rothstein came to the New Milford plant at approximately 7 p.m. on February 13, 4 hours before his shift was to begin. Observing that there was not

[14] Sommerville's testimony regarding the inspiration for his union activity and the source of his printed material was uncontradicted, though his testimony was laid in doubt by his reference to Quick as a friend of employee Meyers in contradiction of his own affidavit in which he claimed Quick to be his own friend. However, I am satisfied with Sommerville's explanation that the man was a friend to both him and Meyers. In any event aside from this minor discrepancy Sommerville's uncontradicted testimony seems entirely plausible and was given in a forthright manner. I therefore credited his testimony regarding the source of his antiunion literature.

much work for him, Rothstein left the plant. He returned later that evening, at 8:30 p.m., punched in, and began working in the quality control laboratory.

About 8:40 p.m. that evening, Rothstein saw employee Harry Sommerville leave the production line and make a call on a pay phone. Rothstein went to a nearby warehouse, returned to the lab and noticed that Sommerville was still on the phone. Rothstein pursued his chores in the quality control laboratory, elsewhere in the same building and then went to another nearby building. By the time Rothstein returned to the quality control lab, it was a few moments after 9 p.m. At this point, he noticed Harry Sommerville was using a telephone in the supervisor's office.

At approximately 9:30 p.m. that same evening, Rothstein observed that Supervisor Stanley Walega, who was not scheduled to work that evening, had arrived at the plant. A few moments later, Rothstein noticed Walega approach the employees' timecard rack and looked at Rothstein's timecard.

Approximately 10 p.m. that same evening, Rothstein, troubled by his earlier observation, approached Supervisor Walega in the presence of Acting Shift Supervisor Robert Hill and asked what the problem was. Walega, after minimizing the situation, asked Rothstein if he had permission to be in the plant at that time. Rothstein replied that he had obtained his supervisor's permission to come to work early. On February 14, Walega confirmed Rothstein's assertions.

Shift Overseer Merle Jandreau, an admitted supervisor who had arrived earlier than usual, joined the discussion. He asked Rothstein why he was in the plant, and added: "By rules in[15] the handbook if you are not scheduled, you're not supposed to be here."[16] Rothsetin assured Jandreau that he knew the rules, that he had called Supervisor DiPaola and DiPaola had approved Rothstein's early entry to the plant. At this, Jandreau asked why Rothstein's name had not been listed among those to be at the plant that evening. Rothstein replied that he had no knowledge of why his name was not on the list, adding that he had obtained permission and had come to work pursuant to that permission. The discussion terminated and Rothstein returned to his work in the laboratory.

Later that evening, Shift Overseer Merle Jandreau again raised the topic of Rothstein's early arrival. Jandreau instructed Rothstein to obtain Supervisor DiPaola's confirmation of Rothstein's assertion of authority to be in the plant before the beginning of his regular shift. Acting Supervisor Hill later told Rothstein that he had asked Supervisor DiPaola to explain why Hill had not been told of Rothstein's authority to work prior to his normal working hours on the evening of February 13, 1978. Hill issued an oral warning to employee Sommerville for going over Hill's head on the night of February 13.

On earlier occasions, Rothstein had entered the plant prior to his scheduled shift without repercussions. Indeed, during the week following the incident, Rothstein visited the plant without difficulty during his off-duty hours to deliver potatoes and eggs he had sold to Stanley Walega and Robert Hill. Further, in November 1977, Rothstein had observed employees Collin Jandreau and Harry Roth at the plant prior to their regular working hours.

Prior to his encounter with Rothstein on February 13, Walega had on other occasions asked employees why they were in the plant when it appeared that they were in an off-duty status. One such incident occurred in February 1978 approximately 1 week before Rothstein's encounter. Thereafter in March 1978, Walega encountered off-duty employee Scott Pond and asked him why he was in the plant. In both instances Walega was at work when he discovered the off-duty employees.

Rothstein, who at the time of the hearing had been an employee at the Company's New Milford, Connecticut, plant for 3-1/2 years, had signed the petition of June 12, 1977, in support of the Union's request for recognition and bargaining. In June 1977, Rothstein in the presence of Supervisors Merle Jandreau and Stanley Walega announced to Personnel Manager Charles Hills, Sr., that he had signed a union authorization card. Finally, Supervisor Walega admitted that he knew Rothstein to be a union supporter because he wore a union button.[17]

The General Counsel contends that Jandreau and Walega harassed Rothstein on the night of February 13 because of his union activity. The General Counsel argues that the extraordinary responses of Stanley Walega and Merle Jandreau reflected the Company's anxiety to find a pretext for terminating Lee Rothstein, a known union adherent. However, I am not persuaded that Rothstein suffered disparate treatment. The record shows that the Company has a rule prohibiting off-duty employees from being in the plant, and that Supervisor Walega has enforced the rule against other employees with no showing of their union sentiment or activities. Absent was any showing that Jandreau's and Walega's treatment of Rothstein was a departure from their practices in similar circumstances.

Further, the evidence does not show that the Company was anxious to terminate Lee Rothstein in February 1978. There is no showing that the Company gave instructions to any supervisor or to any employee to be alert for Rothstein's possible deviation from company rules. It also appears that telephone calls from Sommerville, a rank-and-file employee with whom Rothstein had had several encounters, triggered the management's response. Granted there is ample evidence of the Company's union animus including Personnel Manager Hills' implied threat of discharge to Rothstein in June 1977. However there is no showing that the Company had made any further threats to Rothstein in the intervening 8 months, or that the Company was paying special attention to him. In sum, I find no merit to the allegation of unlawful harassment and shall recommend its dismissal.

[15] Jandreau's arrival that evening was at least 30 minutes ahead of schedule. I find from Robert Hill's testimony that Jandreau arrived early because of Rothstein's presence.

[16] The Company's current New Milford plant employees' handbook contains the following prohibition at p. 11 "No one allowed in Mill on off duty hours."

[17] The testimony regarding this incident did not raise issues of credibility.

C. *Alleged Discrimination*

1. Ronald MacKenzie

a. *The facts*[18]

Ronald MacKenzie, an employee at the Company's New Milford plant since October 20, 1975, was terminated on May 31, 1977. At the time of his termination MacKenzie was a binderman, regularly assigned to the second shift, from 3 to 11 p.m.

MacKenzie became embroiled in the Company's antiunion activity during the second week of May 1977, when he participated in one of Plant Manager Kyle's meetings with groups of employees. MacKenzie attended the meeting together with eight or nine other employees and Personnel Manager Charles Hills.

After the meeting began, Plant Manager Kyle passed around a magnified copy of the Union's authorization card, while he addressed himself to the Company's opposition to a union at New Milford. Kyle warned that such cards would be circulating around that plant and cautioned the employees to read them carefully. Kyle asserted that by signing such a card, an employee joined the Union and thereby became liable to pay dues and fines for failing to attend union meetings. When the enlarged card reached MacKenzie, he remarked that if the plant had benefits for its employees, they would not need a union. He added: "The way things are, I'd sign a union card if it came into the shop."

When Kyle pointed out that the Company had social security benefits and insurance, MacKenzie countered with critical comments disparaging the value of the asserted benefits to employees. MacKenzie gave his own recent experience as an example of the inadequacy of the Company's insurance benefits. MacKenzie also asserted that employees should have a union to insure benefits and to "have somebody to speak up for them." MacKenzie suggested that the Company supply protective masks to employees in the binder area who are working with ammonia and other chemicals. He pointed out that there was only one mask at his work station for three employees and that mask was so dirty that he would not use it. Personnel Manager Hills tapped MacKenzie's leg with his foot and said, "Well, I am taking care of that." MacKenzie came back with a sarcastic response: "Yes, you have been taking care of it ever since I started."

Kyle asserted that if the Union succeeded in its campaign, all of the employees would be required to join the Union. At this, MacKenzie volunteered that the employees could have an open shop under which union membership would be voluntary. Kyle contradicted this suggestion saying: "there is no such thing." MacKenzie rejoined asserting that there was such an open shop at a plant in Bantam, Connecticut. One other employee Conrad D'Elia talked of his union sentiment. D'Elia expressed doubt that the New Milford employees needed a union. He believed that the Company could recognize the employees' right to bargain for themselves as a group. But if the Company would not deal with the employees as he envisioned, D'Elia saw the necessity for seeking help from a union.

In the days immediately following the meeting with Kyle, MacKenzie actively supported the Union. On or about May 15, he signed an authorization card. Thereafter, he obtained three blank union authorization cards from employee Burt Bradford, and solicited signatures on them from fellow employees. Soon after Kyle's meetings, union authorization cards were clearly visible in MacKenzie's white shirt pocket, while he was at work in its New Milford plant. On May 25, 1977, MacKenzie obtained a signed authorization card for the Union from employee James Miller.

On May 23, MacKenzie was working in production as a binderman or binder mixer. His job was to make a chemical foam and finish for use on the production line. This material known as "binder" is used to treat the fabric produced at the New Milford plant.

On the evening of Monday, May 23, the Company told MacKenzie that because the third-shift binderman was incapacitated, MacKenzie, who had reported for work at 3 p.m. that day, would be required to work until 7 a.m. on May 24, a total of 16 hours. For the remainder of the week, the Company scheduled MacKenzie to work from 7 p.m. to 7 a.m. Between May 22 and his last workday at the New Milford plant, May 28, MacKenzie worked a total of 68 hours.[19] On his last shift, MacKenzie was scheduled to work from 7 p.m. Friday evening to 7 a.m. Saturday.

During the first break on that shift, MacKenzie, while in the coffeeroom with employee Gustafson and Shift Overseer Merle Jandreau, told Jandreau that he intended to prepare the binder so that it would not "jell up." MacKenzie stated that he expected to complete this task between 2 and 2:30 a.m. and added that he was tired and wanted to leave work at 3 a.m.

At approximately 1:30 a.m. Shift Overseer Jandreau called Mackenzie into his office and assigned him to work on 16-hour shifts all of the next week. MacKenzie protested that he could not endure that work schedule, complaining that he was tired and wanted to go home at 3 a.m. Jandreau said nothing. MacKenzie and Jandreau concluded their discussion and Mackenzie returned to work.[20]

[18] MacKenzie's testimony occasionally differed from his pretrial affidavit taken by a Board agent. However, MacKenzie impressed me in general as being a candid witness, conscientiously trying to remember what happened and what he and others said and did. Except as noted, I have based my findings of fact regarding his discharge upon his testimony and the uncontradicted testimony of Burton Bradford, James Miller, Robert Waugh, Conrad D'Elia, Richard Farrell, and Richard E. Gustafson, Jr., which in large part corroborates MacKenzie's testimony.

[19] This finding was based on MacKenzie's timecard and Plant Manager Kyle's testimony.

[20] Merle Jandreau testified that he had two conversations with MacKenzie on the night of May 28. Jandreau testified that the first conversation was during break at 11 p.m. in the breakroom, in the presence of employee Gustafson. Jandreau testified that he spoke to MacKenzie only to assure himself that there was sufficient binder on hand. Jandreau denied that MacKenzie said anything at that time about being tired or that he intended to leave the plant early. However, of the two, MacKenzie appeared to be more conscientious about providing detailed recollection of events and conversations. MacKenzie's reasonable explanation of the apparent inconsistencies between his testimony and his pretrial affidavit also weighed in favor of his credibility. MacKenzie's credible testimony that he was tired on the night of May 28 casts doubt upon Jandreau's

Continued

At 3 a.m., MacKenzie took his timecard to the coffeeroom and then to the lab in search of Merle Jandreau. Soon, MacKenzie gave up the search, punched his timecard, put it on Jandreau's desk, and left the plant.

Kyle conceded that at times bindermen do not complete their full shift, particularly on weekends. He also testified that the Company normally tries to provide employees with a holiday weekend "intact," unless business considerations required otherwise. Kyle conceded that during the Memorial Day weekend of 1977 no exceptional circumstances required bindermen to remain at work until their respective shifts ended. I also find from Personnel Manager Charles Hills' testimony, that if a binderman finishes his work before the end of his shift, he may leave the plant early, provided, he has permission from management.

As a matter of practice,[21] on weekends, bindermen use their own judgment to determine if they can leave the plant early. Their decision depends on whether there is sufficient binder to supply the current shift. When a binderman decides that he has completed his assigned work, the normal practice is to ask the shift supervisor for "permission to leave." If the supervisor is satisfied that the binderman has completed his work, he will grant the request. When MacKenzie left the plant on the morning of May 28, 1977, he had prepared sufficient binder to cover the needs of his shift, but had not cleaned some water tanks for which he was responsible. However, Merle Jandreau, on cross-examination, conceded that MacKenzie's early departure on May 28 did not create any problems for the production line. MacKenzie left sufficient binder to permit the production line to continue running for the balance of the shift.

Shift Overseer Jandreau discovered MacKenzie's timecard showing 3:05 a.m. punchout on his desk soon after 3:05 a.m. Jandreau marked the timecard to reflect MacKenzie's early departure and wrote "walked off the job" on the back of the timecard. Jandreau sent the following note to Personnel Manager Charles Hills:

> R. Mackenzie punched out at *3:00* and went home, not telling me he was leaving.
>
> I do not think he should get paid for his holiday.

Jandreau sent another note early that same morning to Production Superintendent Abbott. This note reported MacKenzie's 3 a.m. departure, without authorization, and added his neglect to clean out the water tanks for which he was responsible.

On the afternoon of Tuesday, May 31, Kyle decided to discharge MacKenzie for walking off of his job on the night of May 28. At the time of his decision, Kyle knew that MacKenzie had worked 68 hours during the previous workweek. He also had the benefit of Shift Overseer Jandreau's written reports to Abbott and Hills, and had discussed the incident with Jandreau, who made no recommendation as to disciplinary action. Kyle was thus aware of Jandreau's written recommendation that MacKenzie be deprived of holiday pay.

Hills and Abbott considered MacKenzie to be a good employee. Prior to his discharge on May 31, the Company never disciplined MacKenzie. When MacKenzie became a binderman, Personnel Manager Hills had offered MacKenzie the position of line foreman on production line 7, stating that he thought MacKenzie would be a good line foreman inasmuch as he was "hell of a good worker." MacKenzie declined the offer.

At approximately 7 p.m. on May 31, MacKenzie arrived at his work station prepared to begin a 12-hour shift. Before he could begin, Production Superintendnet Charles Abbott, who was waiting for MacKenzie, conducted him to an office where he announced MacKenzie's discharge for leaving his job without permission. MacKenzie denied the accusation and challenged Abbott to confront him with Shift Overseer Merle Jandreau. MacKenzie insisted that accusation was untrue. Abbott dialed a telephone and, after a brief wait, hung up the phone and announced he could not contact Jandreau. MacKenzie volunteered that if he had the number he would be able to reach Jandreau. Abbott brushed this suggestion aside, saying that MacKenzie was discharged, "and that is all there is to it."

MacKenzie pressed Abbott for an explanation of the New Milford employees handbook's contents indicating that he was entitled to a verbal warning for the first offense, a written warning next, and a 3-day suspension before a discharge could be imposed for the same offense. Abbott rejected MacKenzie's protest, saying in effect that those requirements did not apply to MacKenzie. Abbott said that MacKenzie was done, but if MacKenzie wished, he could go to "The Labor Board" or to "Chuck Hills" but that neither would do MacKenzie any good. Abbott instructed MacKenzie to clean out his locker and leave. Shift Overseer Walega monitored MacKenzie's departure.

Before he discharged MacKenzie, Abbott expressed reluctance to do so because MacKenzie was a good employee. Abbott explained that it was his duty to discharge MacKenzie and that he did not relish the assignment.[22]

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denial that MacKenzie said anything about being tired in either of the two conversations. I am particularly suspicious of Jandreau's testimony that MacKenzie said he was "fine," when Jandreau assertedly asked him how things were going at a second encounter about 1:30 a.m. on May 28. Given MacKenzie's heavy workload during the preceding portion of the workweek (60 hours) it appears likely that he was weary, was anxious to get some rest soon, and that he would have said as much to his supervisor. In view of the foregoing and my impression that MacKenzie was the more candid witness, with it, where their testimony conflicts, I have credited MacKenzie.

[21] I based my findings of fact in this paragraph on the credible and uncontradicted testimony of former company binderman Carl A. Carlson.

[22] Abbott testified that the Company's longstanding policy was to discharge employees who left their work without permission of their supervisor. However, his signature appears on company records showing the issuance of a written reprimand in each of two instances of such unauthorized departures. He also repudiated the plain language of the Company's New Milford employees' handbook which describes a progressive gradation of discipline for "leaving job or plant without permission (after punching in)," and asserted that the handbook did not require a three-step progression. These flaws in Abbott's testimony regarding MacKenzie's discharge and his apparent reluctance to answer under cross-examination regarding the same topic cast considerable doubt on Abbott's reliability as a witness. In contrast, MacKenzie impressed me as being the more candid witness. Therefore, I have based my findings regarding MacKenzie's May 31, 1977, confrontation with Abbott on MacKenzie's testimony.

Two days later, on June 2, MacKenzie, while at the plant seeking his last paycheck, came upon Personnel Manager Hills. MacKenzie raised the topic of his recent discharge. MacKenzie stated that the discharge did not trouble him but he did object to being lied about. Hills asked if before leaving the plant on the night of May 28 MacKenzie had completed all his work. MacKenzie conceded that he had inadvertently failed to clean the water tanks. MacKenzie also claimed that this omission was "no big deal" as the bindermen do not clean them every week. Hills said that it was MacKenzie's word against Jandreau's and that Jandreau was "the boss." Hills said he would talk to Jandreau that same night, and asked that MacKenzie contact Hills the following morning. MacKenzie did not do so in light of Abbott's suggestion that contacting Jandreau would prove futile.

As MacKenzie pointed out to Abbott, the Company's current New Milford plant employees handbook at page 11 talks of three types of disciplinary action, in the following sequence, "verbal warning, written warning and discharge." Under the topic "Procedure," in the following sequence on the same page the handbook states:

> Disciplinary action must be enforced, normally in the above sequence, for cause arising out of, but not necessarily restricted to the following:

Listed under this heading are 19 offenses. Number 11 in this list is "Leaving job or plant without permission (after punching in)."

On May 31, 1977, Production Superintendent Charles Abbott filled out a company form headed "Termination of Employment" regarding MacKenzie. Abbott placed an "X" in a box marked "Quits." Other choices open to Abbott were "Discharges" and "Laid Off." Abbott placed another "X" against the words "Walked Off Job." On the same day, Shift Overseer Jandreau filled out a form entitled "Disciplinary Action Work Sheet" on the same incident. Jandreau reported that it was his decision to discharge MacKenzie and that the reason for this action was: "Left work without telling supervisor and did not clean out water tank." On a lower portion of the same form, signed by Charles Abbott, Jr., a space entitled "office comments," Abbott wrote in: "Walked off the job May 27."

Company records show that New Milford employee Lee Rothstein went home in the middle of a shift on March 28, 1977, for which he received a written reprimand. Company records also show that New Milford employees Halliwell and Meyer left in the middle of their assigned shifts and received no punishment. Other company records show that employees who left the plant without notifying supervisors received either a written reprimand or, in one instance, that of Lester Nephew in March 1973 a 3-day suspension without pay. There is no evidence showing any instance in which the Company terminated an employee for walking off the plant premises in the middle of his shift without authorization, where, as in the case of MacKenzie, the employee had a clean record.

b. *Analysis and Conclusions*

There is much in the record to support the allegation that the Company discharged MacKenzie because of his apparent advocacy of union representation. Indeed upon consideration of the evidence, I have rejected the Company's defense and have found the discharge unlawful.

During the second week in May 1977, MacKenzie announced to Plant Manager Kyle and Personnel Manager Hills his willingness to sign a union authorization card. I have little doubt that soon after MacKenzie's announcement, Kyle and Hills shared this revelation with Production Superintendent Abbott and Shift Overseer Jandreau. Two days after expressing prounion sentiment, MacKenzie began the solicitation of signatures on the Union's authorization cards and began carrying such cards openly in his pocket. Thus did he provide further opportunity for management to conclude that MacKenzie supported the Union. In any event, MacKenzie's remarks in the presence of Plant Manager Kyle and Personnel Manager Hills provided the element of knowledge necessary to the General Counsel's prima facie case.

There is also ample evidence of the Company's virulent hostility toward MacKenzie's cause. As found above, the Company demonstrated its hostility by committing unfair labor practices. Plant Manager Kyle and other members of the New Milford plant's management engaged in various acts of unlawful restraint, interference, and coercion designed to chill prounion sentiment and activity among the New Milford plant employees. Indeed MacKenzie made his prounion remarks at a meeting in which Kyle expressed union animus. In sum, the record before me shows that the Company was willing to engage in unlawful conduct to thwart the Union's organizing campaign among its employees. The timing of MacKenzie's discharge also suggests its connection with his statement of prounion sentiment. Kyle's decision to terminate MacKenzie came less than 3 weeks after that remark was heard by Kyle.

Finally, the evidence strongly suggests that the Company was anxious to be rid of MacKenzie. On the night of May 28, Shift Overseer Merle Jandreau turned a deaf ear to MacKenzie's announcement of his intention to leave the plant at 3 a.m. After MacKenzie departed as planned, Jandreau apparently thought loss of holiday pay was harsh enough treatment for MacKenzie. However Kyle rejected Jandreau's recommendation and discharged MacKenzie.

The Company contended that it did not single MacKenzie out for disparate punishment. In support of this position, the Company tried to show that as a matter of practice and policy it discharged employees who without permission from a supervisor walked off their jobs as MacKenzie did. The company official who decided to discharge MacKenzie, Kyle, so testified and also asserted that the stated policy of progressive punishment for that misconduct shown in the New Milford plant employees' handbook was erroneous. However, I do not credit Kyle's testimony and find no merit in the Company's defense. Instead, I find that the Company singled MacKenzie out for special treatment.

Three factors persuaded me to reject Kyle's testimony regarding company policy. First, the Company has done nothing to amend the employees' handbook to reflect the rule championed by Kyle. Further, and more important, the available disciplinary records show that the other employees found guilty of unauthorized early departures prior to May 31, 1977, received the lesser punishments set forth in the employees' handbook. Finally, that shift Overseer Jandreau did not recommend discharge suggests that his experience with such misconduct had taught him that something less than discharge was likely to receive Kyle's approval.

In sum, I find that the Company seized on MacKenzie's unauthorized departure to rid itself of an annoying union advocate. I further find that by this unlawful discrimination, the Company violated Section 8(a)(3) and (1) of the Act.

2. Lester Nephew[23]

a. *The facts*

Sometime in July 1977, employee Lester Nephew noticed Maintenance Supervisor Joseph Rizzo near Nephew's work station checking on maintenance employee Lawrence McGavic and two other maintenance employees. Nephew thought of telling Rizzo that all the employees except McGavic were working, but did not do so. The thought caused Nephew to snicker to himself.

Maintenance employee William Krusky overheard the snickering and asked Nephew for an explanation. Nephew told Krusky of his thought of telling Rizzo that McGavic was not working. Krusky expressed the view that Nephew should have done so.

Shortly thereafter Krusky and Nephew parted company, Larry McGavic came to Nephew and, after threatening to strike Nephew, slapped his face and attempted to strike him again. However, Nephew backed away and avoided further contact. In the course of his assault, McGavic berated Nephew for supporting the Union. Nephew continued to avoid contact. Finally, McGavic broke off the encounter. As he left, McGavic complained that employees such as Nephew had caused him to lose employment elsewhere and he would not let that happen again.

Supervisor Rizzo and maintenance employees Harold Miller and William Krusky witnessed the encounter between Nephew and McGavic. After McGavic's departure, Krusky admitted telling McGavic of Nephew's thought about saying that McGavic was not working.

The Company's management soon reflected concern about McGavic's attack on Nephew. Shortly after the encounter Supervisor Rizzo questioned employee Krusky about it. Later that same day, Rizzo told Krusky that "Larry McGavic was through." Following his report to Rizzo, Krusky was summoned to the plant office where he again repeated his account of the Nephew-McGavic incident to Plant Manager Kyle, Personnel Manager Hills and Rizzo related to Krusky that after he told McGavic of Nephew's idea of accusing McGavic of not performing any work, McGavic went up to Nephew, began "accusing him of something about the Union," and then proceeded to strike Nephew.

Approximately 10 minutes after McGavic broke off the encounter, Production Superintendent Charles E. Abbott, Jr., asked for and received Nephew's account of the incident. Toward the end of the morning, Supervisor Rizzo asked Nephew if he intended to make a written complaint against McGavic. Rizzo remarked that management was waiting for Nephew to make a complaint against McGavic. Nephew responded that he believed that it was unnecessary for him to make out a complaint, as Supervisor Rizzo had witnessed the entire incident. Rizzo stated that his question was pursuant to instructions. Rizzo told Nephew that he did not believe management would take any action unless Nephew made a formal complaint.

That same day, Nephew asked Plant Manager Kyle if the Company required that Nephew file a complaint against McGavic. Nephew also asked whether the absence of a complaint from either Nephew or McGavic would mean that neither would be discharged. Kyle was not able to give an informed answer and said that he would reply to Nephew after a further inquiry.

At midafternoon, Production Superintendent Abbott instructed Nephew to report to the plant office. When Nephew arrived at the office, he found Superintendent Abbott, Personnel Manager Hills, and Plant Manager Kyle.

Nephew recited his version of his earlier encounter with McGavic. Upon completion of Nephew's recitation, Abbott instructed him to leave the office and wait downstairs. By this time, Nephew's shift had ended. However, Abbott instructed him not to punch out but to wait.

Kyle questioned McGavic after hearing Nephew's account. In giving his version, McGavic complained that Nephew had been calling him a scab prior to the encounter under investigation.[24]

About 3:30 p.m., Abbott came to Nephew and conducted him back to the office. Present when the two arrived were McGavic, Supervisor Rizzo, Personnel Manager Hills, and Plant Manager Kyle.

Plant Manager Kyle told McGavic "you was wrong for hitting Lester like you did." Turning to Nephew, Kyle said: "Lester, but from what I hear, you deserved what you got. You been calling people scabs and you called Larry a scab." Nephew challenged Kyle to bring forth a witness who would say that Nephew had called anyone a scab. Kyle brushed Nephew's suggestion aside. Kyle accused Nephew of "picking on Larry [McGavic]." Nephew admitted that he had done so, but that he had not "intended that it come to anything serious."[25]

[23] Except as noted, the testimony of the participants in this incident concerning alleged unlawful discrimination and an alleged unlawful threat of discharge does not raise issues of credibility.

[24] Nephew denied that he ever called anyone a scab. However, McGavic testified that prior to the incident under investigation, Nephew had called him a scab on several occasions. Whether Nephew in fact did so is immaterial. For, Kyle's credited uncontradicted testimony was that McGavic complained to Kyle that Nephew had called McGavic a scab.

[25] My finding regarding this additional portion of Kyle's and Nephew's exchange is based on Kyle's testimony. This portion of Kyle's testimony was corroborated by Charles Hills, Sr., and uncontradicted by Nephew. In light of McGavic's complaint it seems like that Kyle would press Nephew for an admission.

Kyle then asked McGavic and Nephew whether they could get along with each other, adding that unless they were able to maintain peace between them he would discharge them. Both employees agreed to solve their differences peacefully and thus ended the meeting.

b. *Analysis and conclusions*

The amended complaint alleges that Kyle violated Section 8(a)(3) and (1) of the Act by threatening Nephew with discharge and reprimanding him. In the General Counsel's view, Nephew was reprimanded because he was prounion. The Company argues that it treated the two employees evenhandedly and was simply attempting to maintain discipline and good order. I find the available evidence did not show disparate treatment or that the implied threat to discharge had anything to do with union activity.

Instead, contrary to the General Counsel's argument, the record strongly suggests Kyle had reason to believe that Nephew was equally at fault in the matter. Kyle was confronted with a report that Nephew was provoking McGavic by expressing a plan to tell the latter's supervisor that he was not working. Upon further inquiry, Kyle came upon McGavic's complaint that Nephew was calling him a scab. The apparent result of Nephew's taunting was McGavic's disorderly conduct. Faced with a need to avoid further clashes, Kyle seemingly attempted to placate the two employees by apportioning blame for the incident and coaching them into agreeing to get back to work without further outbreak. It thus appears that Kyle treated the two employees as he did in an effort to restore peace to his plant without regard to union sentiment. Kyle's remark that Nephew deserved to be slapped while constituting a reprimand seems all of a piece with Kyle's other remarks made in an attempt to quell the possibility of further provocation. In sum, I cannot agree that Kyle's treatment of Nephew in this instance violated Section 8(a)(3) and (1) of the Act. I shall therefore recommend dismissal of the allegations that the Company's resolution of the Nephew-McGavic incident violated those sections of the Act.

3. Nephew and Turner

a. *The facts*

At all times material to this case, the Company employed Lester Nephew as line foreman and Sidney Turner as fiberman at its New Milford plant on the first shift of production line 5. Both Nephew's and Turner's names appeared on the Union's petition on June 12, 1977. On November 19 and 20 employee Turner along with about 1,000 other employees, attended the Union's South Carolina rally for the Company's employees. Turner described the gathering as follows:

> It was a rally where a group of J.P. Stevens employees got together and talked and sang songs about uniting to make ourselves strong.

Turner told the assembled employees that the New Milford plant employees supported them.

Upon his return to the plant, Turner engaged in a discussion of the rally with employee Billy Baucom. Training Instructor Lowell Fisher[26] asked Turner where he had been during his recent absence and what he had done. Turner replied that he had been to South Carolina attending a union rally.

In early December 1977, Plant Manager Kyle told employee Nephew that Nephew and employee Sidney Turner were to stop sitting on the table situated near line 5. This instruction was directed at Nephew's and Turner's practice of sitting on a nearby table while the machines on line 5 were running. Kyle directed that Nephew and the other line 5 employees were to walk and watch the line. Despite Kyle's instruction, Nephew and Turner continued to sit on a table on occasion while the production line was running. Approximately 1 week after Kyle had issued his initial prohibition, he again spotted Nephew and Turner seated on the same table. Kyle summoned Nephew and repeated his earlier prohibition against sitting on the table.

Disregarding Kyle's instruction, employees Nephew and Turner continued to sit on the table along production line 5. On one such occasion, Kyle observed Nephew seated on the table while production line 5 was operating. Again, Kyle instructed Nephew that he was not to sit on the table.[27] Notwithstanding this instruction Nephew and Turner continued to sit on the table, Shift Overseer Stanley Walega on instructions from Production Superintendent Abbott and Personnel Manager Hills ordered them to stop sitting on the table. About 2 weeks later Walega repeated the order to Turner stating that Kyle and Hills had directed him to do so. Finally, Personnel Manager Hills observed Nephew and Turner seated on the table again and warned them. Hills instructed Turner to station himself in the fiber room and warned that the next time he caught the two he would issue written reprimands to them. Following Hills' warning, the two employees began sitting on a roll of fabric in the fiber room located about 20 feet from their former table location.

Nephew and Turner found the fiber room less desirable than the table. Dust and fibers floated through the more humid air in the fiber room. The air quality near the table was better, and the table was more comfortable than the roll of fabric. Nephew attempted unsuccessfully to persuade Kyle that the table was the best location from which to observe what Nephew believed was the most important part of the production line.

Foster Gilbert, the third-shift production line foreman on line 5, who at the time of hearing had worked on that line for 2 years, credibly testified that he knew of no strictures against employees sitting anywhere on the production line during his shift. I also find from Gilbert's testimony that the Company permits employees to sit any place along the line, so long as they patrol it from

[26] I find below that Fisher was a supervisor within the meaning of the Act.

[27] Kyle flatly denied giving any instructions concerning where Nephew and Turner could sit. Abbott, Walega, and Nephew testified to the contrary. As Abbott, Walega, and Nephew impressed me as more candid witnesses, I have rejected Kyle's denial.

time to time to make certain of its proper operation. Finally, I find from Gilbert's testimony that the Company did not prohibit the third shift from sitting on the table during December 1977.

At the hearing, counsel for the General Counsel on cross-examination asked Plant Manager Kyle whether Nephew and Turner could sit on the table near line 5. Kyle's response was as follows:

> They can sit anywhere they like as long as the line is running as it should correctly, and as long as they are taking care of any problems concerning the waste or any other potential threat.

Supervisor Walega conceded that he only cautioned Nephew against sitting on the table after he himself had received instructions to do so from his superiors. Walega conceded that aside from Nephew and Turner, he never told any other of his subordinate employees that they were prohibited from sitting down while working on production line 5. Walega also testified that he did not care whether Nephew sat on the table or elsewhere so long as line 5 ran "good."

b. *Analysis and conclusions*

The General Counsel contends that the Company violated Section 8(a)(3) and (1) of the Act by prohibiting Nephew and Turner from sitting on the table near production line 5. It is also alleged that Hills' threat to issue a written reprimand to Nephew and Turner if they sat on the table violated Section 8(a)(1) of the Act. I agree with these contentions.

Early in June 1977 Nephew told Supervisor Reynolds that he was for the Union and had attended a union meeting. Later in June 1977, the Company saw Nephew's and Turner's names on the Union's petition. Walega admitted that at the time he spoke to Nephew and Turner in December 1977 he knew they were union supporters because they wore union buttons. More recently, in November 1977, Turner had attended the Union's South Carolina rally and had told Lowell Fisher, a company supervisor, about his presence at the event. From these facts, I find that at the time they prohibited them from sitting on the table Plant Manager Kyle, Superintendent Abbott, and Personnel Manager Hills knew of Nephew's and Turner's prounion sentiments. More important they knew of Turner's participation in a union meeting called to focus attention upon the Company's antiunion activity. The record makes plain the Company's New Milford plant management opposed the Union. The intensity of this opposition manifested itself in the unfair labor practices found elsewhere in this Decision, including discriminatory treatment of prounion employee MacKenzie. Thus the Company was not averse to engaging in unfair labor practices in combating the Union.

In light of the background against which it occurred, the unusual requirement that the Company imposed on Nephew and Turner so soon after the latter had disclosed his latest prounion activity requires explanation. The Company argues that extraordinary problems on production line 5 during November and December 1977 required the close attention of the three shifts employed on that line. However, no prohibition against sitting on the table went to the third shift, which faced the same problems. Further, first-shift Overseer Walega, Nephew's and Turner's immediate supervisor, did not see the need to impose the no-sitting rule on them until directed to do so by his superiors. Plant Manager Kyle himself denied giving the no-sitting order, and testified in substance that such a prohibition would have been unnecessary to maintain production on line 5. However, I have found that Kyle, in fact, vigorously imposed a no-sitting rule on Nephew and Turner in December 1977. If such a stricture cannot be explained as a response to a production problem, the surrounding circumstances strongly suggest union animus as the answer.

In sum, I find that the Company ired by Turner's attendance at the Union's South Carolina meeting decided to punish him and prounion employee Nephew by making their working conditions a bit more burdensome. By this discriminatory treatment, the Company violated Section 8(a)(3) and (1) of the Act. I also find that Hills' warning of a written reprimand violated Section 8(a)(1) of the Act. For this warning carried the implication that the Company intended to punish the two employees because of their support for the Union.

D. *The Unlawful Refusal to Bargain*

On June 20, 1977, the Union, by letter addressed to the Company, declared:

> A majority of your employees, employed in a unit which is appropriate for collective bargaining at New Milford, Connecticut, have designated the Amalgated Clothing and Textile Workers Union, AFL-CIO, as their exclusive representative for the purposes of collective bargaining.
>
> The enclosed petition, signed by your employees evidences this majority. You are hereby notified that the Union demand recognition as the collective bargaining representative of your employees for the purpose of negotiating a collective bargaining agreement covering wages, hours, and other terms and conditions of employment.
>
> Please advise the undersigned as to when you will be willing to commence said negotiations.
>
> Any change or modification in wages, hours or other working conditions made without prior consultation with the Union, and any discrimination against the employees who have signed the enclosed petition will be considered a violation of law.

The petition referred to in the letter contained 46 signatures and recited the following:

> The following employees are members of the in-plant organizing committee who are trying to get the Amalgamated Clothing & Textile Workers to be the authorized bargaining agent for the employees of the J.P. Stevens plant, the nonwoven division in New Milford, Connecticut.

> Furthermore, the following employees have signed blue cards and by doing so have designated the Amalgamated Clothing & Textile Workers to be their authorized bargaining agent to represent the employees at the J.P. Stevens plant in New Milford, Connecticut. Said employees have signed the blue cards to signify their membership in the Amalgamated Clothing & Textile Workers Union.

By its letter of June 30, 1977, signed by Plant Manager John Kyle, the Company rejected the Union's request for recognition and bargaining. Respondent's letter expressed full perception of the Union's message in the letter of June 20. Thus, the Company replied:

> We have received your letter stating that the Amalgalated Clothing & Textile Workers Union claims to represent a majority of the employees at our New Milford plant and demanding that the Company agree to recognize and bargain with the ACTWU.

The Company's letter expressed doubt that the Union represented an uncoerced majority of the New Milford employees "in any unit appropriate for collective bargaining." The Company suggested that the issue of majority status would best be resolved by an NLRB-supervised representation election.

The amended complaint recited that on or about June 20, 1977, the Union requested that the Company bargain in the following appropriate unit:

> All production and maintenance employees including shipping and receiving and quality control employees of Respondent employed at its New Milford, Connecticut, plant, exclusive of all other employees, guards and all supervisors as defined in Section 2(11) of the Act.

In its answer, the Company denied the allegation that the described unit was appropriate. Although the Company did not agree at the hearing that the unit was appropriate it has made no effort to show why the Union's proposed unit is inappropriate.

It is well settled that a plantwide production and maintenance unit is presumptively appropriate. *Appliance Supply Co.*, 127 NLRB 319, 321 (1960). The Company has failed to rebut that presumption. I find, therefore, that the unit described in the complaint, which is the same unit described in the Union's demand for recognition and the Company's response, is appropriate for bargaining purposes. *Beaumont Forging Co.*, 110 NLRB 2200, 2201-02 (1954). The Union prepared the petition, accompanying its demand for recognition, at a meeting attended by a group of about 30 of the Company's New Milford plant employees and officials of the Union, on June 12, 1977, at Harry Brook Park, New Milford, Connecticut. Union Vice President Paul Swayde instructed Deborah Fogarty, a union attorney present at the meeting, to draft the petition. Vice President Swayde invited the employees to sign the petition to show their membership in the Union and their desire to have the Union as their collective-bargaining representative. Swayde also announced the Union's intention to send a copy of the petition to Plant Manager Kyle. Attorney Fogarty read the petition to the group and stated its purpose was to show that the employees desired membership in the Union and that they designated the Union as their collective-bargaining representative. By the end of the meeting, there were 27 signatures on the Union's petition.[28]

Employee James Dunleavy was the first to sign the Union's petition. Although Dunleavy dated "6/11/77" next to his signature, he credibly testified that he signed the petition at the union meeting which I have found from uncontradicted and credible testimony to have occurred on June 12, 1977. Employee Richard Peck attended the union meeting in Harry Brook Park on June 12. He was the second employee to sign the petition. He did so after reading its contents and wrote the same date as did employee Dunleavy.[29]

I find from the credible testimony of employees Floyd Williams and Lee Rothstein that they attended the meeting of June 12, read the petition, and signed it. Both employees inadvertently dated their signatures "6/11/77." Rothstein also witnessed the signature of employee George Burhance, the last signature on the petition followed by "6/15/77."

On June 12, employee Conrad D'Elia signed the Union's petition at the meeting after reading it. D'Elia observed approximately 30 to 35 employees at the Harry Brook Park meeting. He also saw employees James Dunleavy, Floyd Williams, Jr., Robert Jones, Arthur F. Stack, and Richard M. Peck sign the petition at the meeting on June 13. D'Elia also saw employees David Gold, Frank Peet, Wellington Pond, Gregory Zack, Patricia Flynn, and Dennis Tanner[30] at the meeting of June 12. In the course of his solicitations, D'Elia invited each employee to read the petition before signing it. Employee Francis Miller asked about the possibility of an election. D'Elia explained that if Plant Manager Kyle refused to recognize the Union, an election would be sought.[31]

Employee Harry Rothe also attended the June 12, 1977, meeting in Harry Brook Park. Rothe's signature appears on the second page of the petition. Although he had an opportunity to do so, Rothe did not read the petition. There was no showing that anyone told him that the petition would be used only to seek a Board-held election among the New Milford employees.

Employee Lester Nephew attended the Union's June 12, 1977, meeting. I find from Nephew's testimony that he signed the union petition during the meeting, but inadvertently wrote "6/11/77" after his signature. I find from employee Richard Peck's testimony that on the

[28] My findings regarding the origin of the Union's petition and the circumstances leading up to and including the 27 signatures on the petition are based on the credible testimony of Deborah Fogarty.

[29] My findings as to Peck's signature are based on his uncontradicted testimony.

[30] Upon review of the signatures on the petition and the list of agreed unit employees as of June 22, 1977 (G.C. Exh. 44), I find that the transcript references to Greg Zack, Frank Peet, David Dole, and Dennis Hamman are incorrect, and hereby order that those references be corrected to show Gregory Zack, Frank Peet, David Gold, and Dennis Tanner, respectively, as the names of the individuals referred to.

[31] My findings regarding D'Elia's signature and those he obtained are based on his uncontradicted testimony.

morning of June 13, he brought the petition to the Company's New Milford plant where he obtained signatures of employees Duane L. Burch, Wyatt Flynn, Olington Pond, Stuart W. Pond, and James Redfearn.[32] On the following day, June 14, I find from his testimony that Peck obtained the signatures of employees Allen L. Gant, Bill Baucom, and Donald J. Brain. Finally, I find from Peck's testimony that employees Roena Schilke, Richard Rizzo, Gregory Zack, Bruce Roach, George Tucci, and Frank Peet, attended the Union's June 12 meeting.[33]

When Conrad D'Elia signed the petition on June 12, all of the signatures above his were present on the petition. The names signed above D'Elia's signature included George H. Hipp, Michael B. DeHoyos, Elliot R. Kuhne, Randall Raymunt, David J. Gold, Gregory Zack, Dennis Tanner, George Tucci, and A. Dorato.

At the hearing, counsel for the Company stated that he had no knowledge that any of the signatures on the Union's petition which the Company had received over 8 months earlier were not authentic. Counsel for the General Counsel asserted without challenge that all Internal Revenue Service W-4 forms, bearing the payroll signatures of the Company's employees, whose names appear on the Union's petition were in the hearing room. Further, I invited the Company to check the signatures on the Union's petition to determine for itself the authenticity of the signatures. However, the Company has not challenged the authenticity of any of the 46 signatures on the petition.

The testimony offered by the General Counsel showed that between the drawing up of the petition on June 12, and June 20, 1977, the date of the Union's demand for recognition, the petition passed among soliciting employees Peck, D'Elia, Rothe, and Dunleavy, and the Union's organizer, Jeffrey Ballinger. The petition finally came into the possession of the Union's legal department and its general counsel, Arthur M. Goldberg, who sent it to the Company on June 20, 1977.

In sum, I find that credited testimony provided direct evidence establishing the authenticity of 28 of the 46 signatures on the Union's petition. Turning to the remaining 18 signatures, I note that they were all affixed to the petition on June 12, 1977. I also note that the Company has not challeged the authenticity of any of the signatures on the petition, though ample opportunity was provided. In light of these circumstances, I find that these 18 signatures are also valid designations and should be counted along with the other 28 signatures in determining the Union's majority status on the crucial date, June 22, 1977. *Henry Colder Co.*, 163 NLRB 105, 116–117 (1967).

In addition to the petition containing the names of 46 employees, the General Counsel offered authorization cards signed by company employees Ronald MacKenzie, Michael McLaughlin, Raymond Martinez, Foster Gilbert, James Miller, Richard Gustafson, Jr., and Carol Rizzo. The Company does not dispute the validity of the authorization cards signed by Gustafson, Rizzo, and Gilbert. The evidence pertaining to the validity of the remaining disputed authorization cards is set out and evaluated below.

The Company urges rejection of Ronald MacKenzie's authorization card on the grounds that the evidence does not show when MacKenzie signed the card and that MacKenzie was told at the time he signed that the card would be used only to pick a representation election. I find no merit in the Company's contentions.

MacKenzie signed one of the Union's authorization cards, which reads as follows in pertinent part:

> I hereby accept membership in the Amalgamated Clothing and Textile Workers Union of my own free will and do hereby designate said Amalgamated Clothing and Textile Workers Union as my representative for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment.

The same bears the date "May 16, 1977." At the hearing, MacKenzie was unable to verify the date shown. However, he testified that he executed the authorization card approximately 2 days after his attendance at one of Plant Manager Kyle's meetings. In 1977, Kyle held his antiunion meetings with employees, on May 11, 12, and 13. From this it appears that MacKenzie signed his card on or about May 15. In any event, I find that MacKenzie signed the card prior to June 20, 1977.

As MacKenzie's authorization card unambiguously recited that he authorized the Union to represent him for purposes of collective bargaining and made no mention of an election, his card would be counted in favor of the Union unless it were shown that the solicitor told MacKenzie the sole purpose of the card was to obtain a Board-held election. *Cumberland Shoe Corp.*, 144 NLRB 1268, 1269 (1963), the Supreme Court, in *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 606–607 (1969), approved the Board's policy as follows:

> In resolving the conflict among the circuits in favor of approving the Board's *Cumberland* rule, we think it sufficient to point out that employees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature. There is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election.

Company counsel questioned MacKenzie extensively about the remarks of the employee who solicited MacKenzie's signature on the authorization card. MacKenzie credibly testified that the employee told him "that they would try to get a union in the shop. You have to have a certain percent of the employees sign them to have a union delegate come in and explain union to the employ-

[32] Using the list of agreed unit employees as of June 22, 1977, I have corrected the spelling of the names of employees Olington Pond, Stuart W. Pond, and James Redfearn, and order that the transcript be corrected accordingly.

[33] I have corrected the spelling of the names of employees Roach, Schilke, Zack, Tucci, and Peet by reference to the petition and G.C. Exh. 44.

ees." Counsel asked MacKenzie if the soliciting employee had mentioned "an election." MacKenzie credibly testified: "Yes he did. He says if they got a certain percent then they would vote on whether they wanted a union or not." Counsel asked: "Did he tell you the card would be used for an election?" MacKenzie answered: "No, he said that they just had to have a certain percent in order to get the election."

Nothing in MacKenzie's testimony suggests that the solicitor's remarks ran afoul of the Board's *Cumberland* rule. For the solicitor did not direct MacKenzie to "disregard and forget the language above his signature." *NLRB v. Gissel, supra*, 395 U.S. at 606. In short, the solicitor did not tell MacKenzie that his authorization card would only be used for an election. Thus, MacKenzie's authorization card was a valid designation of the Union as his bargaining agent. I shall therefore count his authorization card in determining the Union's majority status.

Raymond Martinez

Employee Martinez signed two authorization cards for the Union. The Company contends that neither of the cards can be counted in favor of the Union on the ground that the evidence does not support a finding that Martinez signed one of the cards prior to June 22, 1977. I agree.

Martinez testified that he signed a union card designated as General Counsel's Exhibit 29 about 2 weeks after attending a meeting in Plant Manager Kyle's office. However, no attempt was made to show that Martinez was referring to one of Kyle's May 1977 meetings. Although General Counsel's Exhibit 29 bears the date "May 15, 1977," Martinez denied that he put that date on that card and could not recall when he signed that card. He twice testified that he signed General Counsel's Exhibit 29 first, and a second card (G.C. Exh. 30), which bears no date, sometime in early July 1977. However, at another point he testified that he could not remember which card he signed first. An attempt to refresh Martinez' recollection by references to his pretrial affidavit was unsuccessful. In the face of the proffered evidence, I find merit in the Company's contention that there is insufficient evidence to show that Martinez signed an authorization card for the Union prior to June 22, 1977. Therefore, I cannot count either of his cards in determining whether the Union enjoyed majority status on that critical date.

James Miller[34]

On May 25, 1977, employee James Miller signed an authorization card similar to that signed by MacKenzie. MacKenzie who solicited Miller's signature told him to disregard what he had heard, and that the authorization card was "to get a union representative in here to discuss a union and see if we have the majority needed to call for a vote." Miller signed the card and returned it to MacKenzie. As he did so, Miller sought and obtained MacKenzie's assurance that the card would be used to "call for a vote." Thereafter, Miller learned through discussion with the Union's representative, Jeffrey Ballinger, that by signing the authorization card he was authorizing the Union to represent him. I find in agreement with the Company that MacKenzie assured Miller that his freshly signed authorization card would be used only for an election. Miller signed the card after MacKenzie told him to disregard information and then declared that it would be used only to determine if there was sufficient employee interest to have an election. However, Miller, uncertain as to the meaning of MacKenzie's words of inducement, as he handed the signed card to MacKenzie, attempted to assure himself that the only purpose for which the card would be used was "just to call for a vote." MacKenzie gave such assurances. Miller permitted MacKenzie to retain the signed authorization card. Thus a condition for completing the transmittal of the authorization card to MacKenzie was the assurance that it would be used only for an election.

The General Counsel and the Charging Party urge that Miller's failure to revoke his card after learning from Ballinger that the Union intended to use Miller's authorization card to support a demand for recognition and collective bargaining demonstrate that Miller intended his card to be used to support the Union's claim of majority status. However, under *Cumberland Shoe*, I am required to examine the circumstances immediately surrounding the signing and surrender of an authorization card in determining the signer's intent. Here I have found that Miller was induced to sign and surrender his authorization card to MacKenzie by assuring that despite its language the card would be used only in support of a request for an election.

Miller's request for assurance that his card would be used only for an election was close enough in time to his delivery of the card to render that inquiry part of the entire transaction involved in the solicitation and delivery of the authorization card. MacKenzie's assurance induced Miller not to seek immediate return of his card. I therefore find that Miller intended that his card be used only to obtain an election. Accordingly, I shall not count Miller's authorization card in determining whether the Union enjoyed majority status. *Levi Strauss & Co.*, 172 NLRB 732, 733 (1968).

Michael B. McLaughlin[35]

On May 28, 1977, Michael McLaughlin signed a union authorization card similar to the card signed by MacKenize. The Company urges rejection of McLaughlin's card on the grounds that he did not understand its purpose when he signed and that when he learned its purpose, he sought its return from the Union. I find no merit in the Company's position.

McLaughlin signed the disputed authorization card which he received from a fellow employee, who told him that the card "would help the Company out." Absent was any assurance that the authorization card would be used only for an election. When questioned about whether he read the card before signing it,

[34] My findings regarding Miller's card are based on his credible testimony.

[35] I based my findings regarding McLaughlin's card on his testimony.

McLaughlin testified: "I just skimmed through it." McLaughlin did not ask the Union to return his authorization card. Nor did he ask the employee who solicited his signature to obtain its return. Under the Board's *Cumberland Shoe* doctrine, set forth above, the circumstances in which McLaughlin signed his authorization card do not warrant its rejection. Instead, I find his card was a valid and timely designation of the Union as his collective-bargaining agent.

From the foregoing, I find that as of June 22, 1977, the Union enjoyed the support of 51 of the employees at the Company's New Milford plant.[36]

A list of employees received in evidence at the hearing contained the names of 88 employees who the parties stipulated were in the appropriate unit on June 22, 1977. The parties also stipulated that if I found that the Company terminated Ronald MacKenzie in violation of the Act, he would be included in the unit. Having found that MacKenzie was terminated in violation of Section 8(a)(3) and (1) of the Act, I also find that he was included in the production and maintenance unit on and after June 22, 1977. *Commodore Watch Case Co.*, 114 NLRB 1590, 1599 (1955). I also find that the 51 employees who by June 22, 1977, had either signed the Union's petition or had executed valid authorization cards were also included on the list of agreed-unit employees. The evidence pertaining to the status of eight other employees whose unit placement is disputed is set out and evaluated below.

Deborah Olson[36]

The General Counsel and the Charging Party contend that employee Deborah Olson should be excluded from the unit on the ground that she is an office clerical employee. The Company argues that she is properly included as a production clerical employee. I agree with the General Counsel and the Charging Party.

The Company employs Olson as a senior clerk in the main office at its New Milford plant where she handles all production records. Her immediate supervisor, Office Manager Charles Fowler, also supervises clerks Dora Meddaugh, Valeri Fisher and Linda Jacquith all of whom were excluded from the unit by stipulation. Olson, Meddaugh, Fisher, and Jacquith are salaried. Olson spends approximately 2 hours per week on the production floor updating efficient charts. She spends the remainder of her worktime in the main office working on production records. Her weekly contact with production employees away from the production floor is limited to 3 hours. Unlike the production and maintenance employees, who are paid weekly, Olson, Jacquith, Fisher, and Meddaugh are paid twice a month and are on a separate payroll.

Respondent urges inclusion of Olson as a plant clerical on the ground that her duties include the handling of production records. However, there are other factors which persuade me that Olson is properly excluded as an office clerical employee. Although she handles production records, Olson performs the bulk of her duties in the main office, away from production and maintenance employees, and under separate immediate supervision. In addition, Olson and clericals Meddaugh, Fisher, and Jacquith enjoy conditions of employment which distinguish them from the agreed-unit employees. I find, therefore, that Olson is an office clerical employee and shall therefore exclude her from the unit. *Loral Electronics Systems*, 200 NLRB 1019, 1024 (1972).

Deborah Mahmud[38]

Senior Clerk Deborah Mahmud works in the plant's technical office together with lab tester Stewart Wellwood and waste/production control employee Mike Flynn, whom the parties have included in the unit. Unlike Wellwood and Flynn who are hourly paid, Mahmud is salaried. Also, unlike them, she is under the immediate supervision of both Office Manager Fowler and Product and Process Manager Reynolds.[39] Thus, Mahmud shared, in part, common supervision with employees Deborah Olson, Dora Meddaugh, Valerie Fisher, and Linda Jacquith. At least as of the critical date, the bulk of Mahmud's work consists of typing letters and reports and filing. The content of the work relates to the production process and involves information which she receives from the production floor. Mahmud spends 75 percent of her worktime in contact with production employees. She spends no time on the production floor. As needed from time to time, Mahmud operates a switchboard in the office where she is located. She also occasionally fills in for Dora Meddaugh at the main office switchboard.

I disagree with the Company's position that Mahmud is a plant clerical employee. For, although Mahmud's typing and filing pertain to production, her work area is in an office and not on the production floor. Further, she shares some common immediate supervision with other clerical employees excluded from the unit, including

[36] After signing union authorization cards, several employees, including McLaughlin, signed petitions which declared that the undersigned did not wish any union to represent them. Some of which declared that the undersigned did not wish any union to represent them and others which declared that the signatories wished return of their authorization cards. These petitions began circulating through the New Milford plant after the Company had violated Sec. 8(a)(1) and (3) of the Act. However, there is no showing that any of the petitions signed by these employees or any of the other employees reached the Company on or before June 22, 1977. Nor was there any showing that any of these petitions reached the Union or the National Labor Relations Board on or before June 22, 1977. The Company first received antiunion petitions about the first week in July 1977, after it had rejected the Union's demand for recognition and bargaining. In these circumstances, I find that the antiunion petitions played no role in the Company's refusal to bargain and did not detract from the Union's majority status on June 22, 1977.

[37] Except as otherwise noted, my findings to the disputed employees are based on Personnel Manager Hills' testimony.

[38] The General Counsel offered the testimony of employee Elliot R. Kuhne regarding employees Olson and Mahmud as well as two other disputed employees, Gregory Peck and Richard Ramsey. Kuhen's employment as a supply clerk at the New Milford plant allowed him to observe these employees in action but only as he went about his assigned tasks throughout the plant. However, unlike Hills, he did not reflect a full familiarity with lines of supervision, job content, and other factors involved in the unit placement issues. However, Personnel Manager Hills appeared to have a fuller familiarity which he seemed willing to present freely. Therefore, where issues of credibility arose in the testimony, I have credited Hills.

[39] After testifying that Fowler was Mahmud's immediate supervisor Hills asserted that Product and Process Development Manager Glen Reynolds also supervised her.

Deborah Olson. From these facts, I find that Deborah Mahmud is an office clerical employee and shall exclude her from the unit. *Loral Electronics Systems*, supra, 200 NLRB at 1024.

Mary Ann Van Driel

Senior Clerk Mary Ann Van Driel works in the New Milford plant's shipping and receiving office which she shares with her immediate supervisor, Roy Pelletier. Van Driel types bills of lading and packing lists and takes care of parcel post shipments. Her hours which are from 7 a.m. till 3 p.m., are the same as those of the first-shift working production and maintenance employees. Shipping Manager Roy Pelletier supervises Van Driel and the shipping department employees. Van Driel is salaried and is on a payroll separate from that of the production and maintenance employees. Further, unlike the production and maintenance employees who are all weekly paid, Van Driel is paid every two weeks. In carrying out her duties, Van Driel spends no more than 20 minutes per day in the shipping area.[40] She spends the remainder talking to shipping employees about outgoing orders. Van Driel's office is separated from the rest of the shipping and receiving area by a door. I find that Van Driel's duties and working conditions support the General Counsel's and Charging Party's contention that she is an office clerical employee. Therefore, I shall exclude her from the unit.

Richard Ramsey[41]

Draftsman Richard Ramsey is employed in the New Milford plant's engineering office located over the production floor. Ramsey's work includes drawing schematics of production line arrangements, drafting, preparing blueprints, and locating machinery in the production area. His work brings him into the production area, where he asks questions of the production employees about their machines. Ramsey spends from 30 to 40 percent of his working time on the production floor with the production employees in connection with his work. He spends the rest of his worktime in the engineering office working near Bruce Roache, a maintenance scheduler who is an hourly unit employee. Ramsey is under the immediate supervision of Plant Engineer Robert Dunsmore, who is also the second level supervisor of the maintenance employees. Ramsey's working hours are from 8 a.m. until 4 p.m. daily. The day shift's production and maintenance employees work from 7 a.m. until 3 p.m. daily.

Also unlike the production and maintenance unit employees, Ramsey is salaried and does not punch a timeclock. Also, unlike those employees, Ramsey is authorized to leave the plant during his lunch period and to take 1 hour for lunch. He is eligible to participate in the office Christmas party. However, Ramsey enjoys the same fringe benefits, vacations, and holidays as are accorded to the agreed-unit employees, but participates in the Company's separate pension plan provided for salaried employees. Ramsey enjoys the same sick leave benefits as do the salaried employees excluded from the unit. These benefits differ from those accorded the unit employees. Although the Company does not require specific or special degrees of formal training, Ramsey's work requires some mathematical ability and special skill. Prior to his current employment, Ramsey had some experience as a draftsman. I find contrary to the Company, and in agreement with the General Counsel and Charging Party, that Ramsey's interests are not sufficiently close to those of the production and maintenance employees to require his inclusion in the production and maintenance unit. Accordingly, he will be excluded. *Maryland Cup Corp.*, 171 NLRB 367, 369 (1968).

Mark Neufeld[42]

The Company employs Mark Neufeld as a senior clerk. Neufeld's desk is in the New Milford plant's main office where he performs inventory control. This function consists of taking care of the cardex file, which reflects the plant's inventory. Office Manager Fowler is his immediate supervisor.

Unlike the production and maintenance employees, Neufeld is salaried. Unlike the first-shift production and maintenance employees who work from 7 a.m. until 3 p.m., Neufeld's working hours are from 8:30 a.m. to 5 p.m.

Neufeld spends 10 percent of his worktime in direct contact with the hourly employees in the shipping and receiving department, where he checks outgoing orders. He also spends 15 to 20 minutes per day talking to production employees on the telephone. When Neufeld goes

[40] Personnel Manager Charles Hills testified on direct examination that Van Driel spent 4 to 6 hours daily with hourly employees included in the unit. On cross-examination, however, Hills testified that he based this testimony on his own observations and conversations with Supervisor Roy Pelletier. Pelletier did not testify. However, Hills conceded that his office is one floor higher in the main office apart from the shipping and receiving office where Van Driel works. He testified that his personal observations occurred during five 15- to 20-minute visits to the shipping and warehouse areas one day and on other unspecified occasions when he noticed Van Driel talking to hourly employees. However, he conceded that he did not know what Van Driel was talking to these employees about. He conceded that he had no personal knowledge as to how much time Van Driel spent talking to hourly employees about her work.

More reliable testimony was given by Richard Peck, a shipping department employee, who observed Van Driel in the shipping and warehouse area, where Peck was regularly employed. Peck testified that Van Driel spent no more than 20 minutes per day in the shipping and warehouse area. Peck testified that his location enables him to observe how much time Van Driel spends in the shipping and warehouse area. Peck also appeared to know with certainty that Van Driel spoke to shipping and warehouse employees about orders and shipments. Peck's work requires him to be in the shipping department for at least 3 to 4 hours per day. As Peck testified with the advantage of being stationed in the shipping and warehouse area, from which vantage point he had more opportunity to observe and hear Van Driel as she performed her duties, I find that Peck is the more reliable witness. Therefore, I have credited him where his testimony conflicted with that of Charles Hills, Sr.

[41] My findings regarding Ramsey are based on the testimony of employee David Jeffrey Gold, Plant Manager Kyle, and Personnel Manager Hills. Employee Floyd Williams testified that draftsmen spend about 20 percent of their time on the production floor. However as he spends 40 to 50 percent of his time circulating around the plant, I have rejected his estimate.

[42] My findings of fact are based on the testimony of Personnel Manager Hills.

on to the production floor it is to check records against actual inventory. On occasion, Neufeld operates the telephone switchboard in the main office.

As do Olson, Mahmud, and Van Driel, Neufeld enjoys 1 hour for lunch and is permitted to leave the plant during the lunch hour. Aside from employee Mike Flynn, who is permitted to leave the plant for a 1-hour lunch period, all the production and maintenance employees receive a 20-minute lunch period in the plant, on the timeclock. As do the other office employees, Neufeld uses a restroom separate from that used by the production and maintenance employees.

I find from the location of his desk in the main office, and his other interests in common with office clerical employees Olson, Mahmud, and Van Driel, that Neufeld is an office clerical employee, and I shall exclude him from the unit.

Gregory Peck[43]

Unlike production employees, Peck at times wears a tie and usually wears a shirt and slacks to work. The Company employs Gregory Peck as its planning scheduler, at the New Milford plant. Peck's desk is located in the plant's main office. Peck schedules all of the plant's production. Since February 1, 1977, Peck has been a salaried employee. His working hours are from 8 a.m. to 5 p.m. Peck is entitled to a 1-hour lunch period which he may take outside the plant.

Peck's job is related to the production process. Peck spends 4 or 5 hours daily on the production floor. Peck receives all the production orders which arrive from New York City, writes them up, and then coordinates them throughout the plant with all the production lines to keep the orders progressing. In the course of his work, Peck checks fibers, discusses the production runs with line foremen and supervisors, and talks to the operators about their production.

The General Counsel and the Charging Party would exclude production scheduler Gregory Peck from the unit as an office clerical employee or as an employee whose interests are more allied with office clerical employees than with agreed-unit employees. The Company urges Peck's inclusion as a plant clerical employee. I agree with the Company's position.

Plant Scheduler Peck spends half or more of his working time among the hourly employees who are engaged in production. Thus, although some of his conditions of employment suggest that he has interests in common with the office clerical employees, Peck's day-to-day functions involve him directly in unit work. Accordingly, I find that Gregory Peck is a plant clerical employee and shall include him in the unit. *Risdon Mfg. Co.*, 195 NLRB 579, 581 (1972).

[43] My findings regarding Peck are based on the testimony of Personnel Manager Hills. Employee Kuhne testified with uncertainty that Peck spends 20 percent of his time on the production floor.

However, Hills impressed me as being a more reliable witness. He seemed more certain than did Kuhne. Further, as personnel manager, Hills would be more apt to pay closer attention to the duties and working characteristics of employees than would Kuhne whose duties as a supply clerk take him away from the plant and would probably distract him from paying close attention to such matters. Accordingly, where there is a conflict between their testimony regarding Peck, I have credited Hills.

Lowell Fisher and Conrad Cable, Jr.[44]

The Company classifies Lowell Fisher and Conrad Cable, Jr., as training instructors. Fisher and Cable are hourly paid, as are the unit production and maintenance employees. They also punch a timeclock and receive time-and-a-half wages for overtime, as do the agreed-unit production and maintenance employees. Cable and Fisher work on the first shift from 7 a.m. to 3 p.m. They enjoy the same fringe benefits and are on the same payroll as the unit production and maintenance employees. As of June 22, 1977, Fisher and Cable wore the same work garb as did the production and maintenance employees with whom they spent 75 to 80 percent of their working time.[45]

Fisher and Cable indoctrinate and train new production and maintenance employees, show safety films to them, and instruct them on machine safety. In emergencies, or when overtime is needed, Fisher and Cable perform production.

On occasions, when a first-line supervisor is absent, the Company utilizes Fisher or Cable as acting supervisors. As acting supervisors, neither Fisher nor Cable have authority to suspend, discharge, or otherwise punish employees. However, when acting as supervisors Cable and Fisher have authority to send employees home if they are inebriated, to recommend disciplinary action, and to give verbal and written warnings to employees. The effectiveness of their recommendations rests on the shift supervisor's or the production superintendent's further investigation and exercise of discretion.

In their role as instructors, Cable and Fisher are authorized to write disciplinary work sheets against employees for violations of company policies or safety rules. The only other hourly employee authorized to write such disciplinary work sheet is Maintenance Supervisor Joseph Rizzo, an admitted supervisor within the meaning of Section 2(11) of the Act.[46]

As Cable and Fisher, as instructors, have authority to issue written disciplinary work sheets against employees, I find contrary to the Company that they are supervisors within the meaning of Section 2(11) of the Act. I shall, therefore, exclude them from the unit.

In sum, I find that the Company demonstrated the invalidity of only two of the Union's seven authorization cards described above. Further, the record persuades me that the remaining 46 signatures contained on the Union's petition are valid. Thus, I find valid designations of the Union as collective-bargaining representative were made by 51 of 89 bargaining unit employees in time to

[44] My findings regarding Fisher and Cable are based on Personnel Manager Hills' testimony.

[45] At the time of the hearing Fisher and Cable wore shirts and ties to work. However they wear work clothes when performing production work.

[46] As defined in Sec. 2(11) of the Act, the term supervisor denotes:

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

support the Union's unsuccessful request for recognition and bargaining on June 22, 1977. (See Appendixes A and B, infra.)

I agree with the contentions of the Charging Party and the General Counsel that it was highly improbable that the Board could conduct a fair election among the Company's New Milford, Connecticut, plant employees. For the Company's unfair labor practices, set forth above, beginning in May 1977, including the discharge of union supporter Ronald MacKenzie, reveal a pervasive campaign designed to restrain, coerce, and interfere with its New Milford employees in the exercise of their rights under Section 7 of the Act to support the Union. The chilling effect of these violations was likely to be felt by all unit employees in the relatively small plant of approximately 125 employees. In these circumstances, I find that the Union's petition and valid authorization cards were the most reliable indication of the desires of the unit employees concerning representation. The Union had obtained its majority support in the appropriate unit by June 22, 1977, the date the Company received its demand for recognition. The Company, which was engaging in a succession of unfair labor practices, beginning with Kyle's unlawful warning to groups of employees in May 1977 against signing the Union's authorization cards, refused the Union's demand on June 30, 1977. I find, therefore, that the Company violated Section 8(a)(5) and (1) of the Act by its refusal to recognize the Union on and after June 22, 1977. *J. P. Stevens & Co.*, 247 NLRB 420, 423 (1980).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC is a labor organization within the meaning of Section 2(5) of the Act.

3. By impliedly threatening employees with discharge, discipline, and other reprisals to discourage them from supporting the Union; by interrogating its employees about their union activities or those of other employees; by warning employees that if they signed authorization cards they would be required to appear and testify in court; by granting benefits and improvements in terms and conditions of employment to employees in order to discourage them from wanting a union; by impliedly threatening employees with the discontinuance of benefits because they support the Union; by threatening to close the Milford, Connecticut, plant, rather than bargain with a union; and by maintaining an unlawful no-distribution rule, Respondent has violated Section 8(a)(1) of the Act.

4. By discharging employee Ronald MacKenzie because he supported the Union, and by imposing more onerous working conditions on Nephew and Turner because they supported the Union, Respondent has violated Section 8(a)(3) and (1) of the Act.

5. By refusing to recognize and bargain with the Union on and after June 22, 1977, Respondent has violated Section 8(a)(5) and (1) of the Act

6. The appropriate unit is:

> All production and maintenance employees, including shipping and receiving and quality control employees of Respondent, employed at its New Milford, Connecticut, plant, exclusive of all other employees, guards and all supervisors as defined in Section 2(11) of the Act.

7. The unfair labor practices set forth above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

8. Respondent has not committed any other unfair labor practices alleged in the complaint.

THE REMEDY

I shall recommend that Respondent be ordered to cease and desist from engaging in the conduct found unlawful herein and post an appropriate notice. The notice should be posted for 1 year, in view of the severity of the unfair labor practices, the timespan within which they occurred and the delay between violation and implementation of the remedy. I shall also recommend that Respondent be ordered to bargain with the Union, offer reinstatement to employee Ronald MacKenzie who was found to have been unlawfully discharged, and restore employees Sidney Turner and Lester Nephew to their former conditions of employment, which included implied permission to sit on a table near production line 5. Respondent will also be ordered to make whole employee MacKenzie because of the loss of pay suffered due to the discrimination against him, computed as provided in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest thereon as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977).[47]

The General Counsel and the Charging Party also request certain additional remedies such as companywide posting, the reading and mailing of notices, and access to company property by union organizers. As the unfair labor practices committed at Respondent's New Milford plant are "the latest in the litany of serious unfair labor practices committed by this Respondent since 1963" (*J. P. Stevens & Co.*, supra, 247 NLRB 420. I find certain of these unusual remedies appropriate in the instant case.

However, contrary to the General Counsel's position and in accordance with the Board's policy, as stated in *J. P. Stevens & Co.*, 247 NLRB 420, 484 and *J. P. Stevens & Co.*, 239 NLRB 738, 767 (1978), I reject the General Counsel's request for a prospective bargaining order covering future bargaining requests anywhere in Respondent's enterprise, whenever the Union obtains either a card majority or a certification.

I also reject, as being against Board policy, the imposition of an interim grievance procedure under which Respondent would be required to reduce to writing all the terms and conditions of employment which it has heretofore unilaterally adopted and implemented at the New Milford plant and to discuss and process any employee grievances arising from Respondent's policies and practices as set forth in the written statement of terms and conditions of employment. The Board has rejected this

[47] See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

request on two occasions. See *J. P. Stevens & Co.*, 247 NLRB 420, 484, and *J. P. Stevens & Co.*, 239 NLRB 738, 769.

However, in accordance with Board policy as stated in *J. P. Stevens & Co.*, 247 NLRB 420, I shall require Respondent "to reimburse the Board and the Charging Party for all litigation expenses—relating to meritorious unfair labor practice allegation—reasonably incurred as a result of this lengthy case." Further, in accordance with Board policy stated in the same case I shall require that Respondent reimburse the Union "for any excess organizing cost it reasonably incurred from [June 30, 1977], the date the Respondent flouted its unlawful duty to recognize the Union." *J. P. Stevens & Co.*, supra, 247 NLRB 420.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended

ORDER[48]

The Respondent, J. P. Stevens & Co., Inc., New Milford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging union activity on behalf of the Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, or any other labor organization by imposing more onerous conditions of employment on employees, or by discharging, refusing to transfer, hire, or rehire, or otherwise discriminating against employees in any manner with respect to their tenure of employment or any term or condition of their employment.

(b) Warning employees that if they signed authorization cards for Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC or any other labor organization, they will be required to testify at a trial or other proceeding.

(c) Interrogating its employees about their union activities or union sentiments or those of their fellow employees.

(d) Promising or granting benefits or improvements in terms and conditions of employment or announcing such benefits or improvements to employees in order to discourage them from supporting the aforesaid union or any other labor organization. However, nothing herein shall be construed as authorizing or requiring Respondent to vary or abandon any benefits previously conferred.

(e) Threatening or impliedly threatening employees with plant closure, discharge, discipline, loss of employment, loss of benefits, or harsher conditions of employment or other economic reprisals because the aforesaid Union succeeds in its organizing activity, to discourage them from supporting the aforesaid Union, or any other labor organization.

(f) Threatening or impliedly threatening employees with loss of benefits previously granted if the aforesaid union succeeded in its organizing campaign or because they engage in union activity.

(g) Maintaining, giving effect to, enforcing or applying any rule prohibiting its employees when they are on nonworking time from distributing handbills, leaflets, or similar literature relating to concerted activities protected by Section 7 of the National Labor Relations Act, as amended, in nonwork areas of Respondent's property.

(h) Refusing to bargain collectively with the aforesaid Union as the exclusive bargaining representative in the appropriate bargaining unit as set forth herein.

(i) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the National Labor Relations Act, as amended.

2. Take the following affirmative action deemed necessary to effectuate the policies of the Act.

(a) Upon request, recognize and bargain in good faith with the Union, Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, as the exclusive representative of all employees in the appropriate unit set forth below, with respect to rates of pay, wages, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a written signed agreement. The appropriate unit is:

> All production and maintenance employees, including shipping and receiving and quality control employees of J. P. Stevens & Co. Inc., employed at its New Milford, Connecticut, plant, exclusive of all other employees, guards and all supervisors as defined in Section 2(11) of the Act.

(b) Offer to Ronald MacKenzie immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges and to make him whole for any loss of earnings and benefits connected with his employment status which he may have suffered because of Respondent's discrimination against him in the manner set forth in section entitled "The Remedy."

(c) Notify employees Sidney Turner and Lester Nephew that they have permission to sit on a bench or table alongside production line 5, so long as the production line is operating properly, and to the same extent they were permitted to do so before the discriminatory prohibition which Respondent imposed on them in December 1977.

(d) Post in conspicuous places in each of Respondent's plants, including all places where notices to employees are customarily posted, for a period of 1 year copies of the attached notice marked "Appendix C."[49] Copies of the notice on forms provided by the Regional Director for Region 1, shall be signed on behalf of Respondent by its president and the chairman of the board of directors, and, in addition, by each of the other members of the

[48] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[49] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

board of directors and by the highest managerial official of the plant in which the notice is posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Reproduce and mail to the home of each of its employees at all of its plants, a facsimile of the aforesaid signed notice, together with the letter appended hereto as "Appendix D." Said letter shall be reproduced on Respondent's regular business stationery and signed by the highest official of the recipient's plant. Respondent shall provide the Regional Director for Region 1 with proof of such mailing.

(f) At such reasonable time after the entry of this Order as the Board may request, convene during working time by departments and shifts, all its employees in each of its plants, and at its option, either have the notice read by the highest managerial official in the plant or provide facilities and permit a Board agent to read the notice to the said employees. In the event Respondent chooses to have the notice read by its official, the Board shall be afforded a reasonable opportunity to provide for the attendance of a Board agent.

(g) Upon request of the Union, made within 2 years from the date hereof, immediately grant the Union and its representatives reasonable access to the plant bulletin board and all places where notices to employees are customarily posted at each of Respondent's plants for a period of 1 year from the date of request.

(h) In the event that during the period of 2 years following entry of this Order, any supervisor or agent of Respondent convenes any group of employees at any of Respondent's plants and addresses them on the question of union representation, give the Union reasonable notice thereof and afford two union representatives a reasonable opportunity to be present at such speech, and, upon request of said representatives, permit one of them to address the employees for the same amount of time as Respondent's address.

(i) If within the next 2 years the Board schedules an election in which the Union participates at any of Respondent's plants, then upon request by the Union afford at least two representatives reasonable access to each of Respondent's said plants and appropriate facilities to deliver a 30-minute speech to employees on working time, the date thereof to be within 10 working days before but not within 48 hours prior to any such election.

(j) Upon request of the Union, immediately furnish it with lists of the names, addresses, and classifications of all of Respondent's employees at each of its plants, as of the latest available payroll date, and furnish a corrected, current list to the Union at the end of each 6 months thereafter during the 2-year period referred to above.

(k) For a 2-year period, upon request of the Union without delay, permit a reasonable number of union representatives access for reasonable periods of time to all its canteens, and rest and other nonwork areas, including parking lots within each of its plants, for the purpose of communicating orally and in writing with the employees in such areas during changing of shifts, breaks, mealtime, or other nonwork periods.

(l) Pay to the Board and the Union the reasonable costs and expenses incurred by them in the investigation, preparation, and conduct of their meritorious litigation before the Board, with interest computed as set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977).

(m) Make whole the Union for all excess organizational costs and expenses reasonably sustained during the campaign at New Milford, Connecticut, from June 30, 1977, with interest computed as set forth in *Florida Steel Corp.*, supra.

(n) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records and all other records necessary or appropriate to analyze the amount due employees under this Order.

(o) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply.

IT IS FURTHER ORDERED that those portions of the complaint found to be without merit are hereby dismissed.

IT IS FURTHER ORDERED that unfair labor practices alleged in the complaint but not specifically found herein are hereby dismissed.

APPENDIX A

The Unit Employees as of June 22, 1977

1. L. Altobelli
2. W. Baucom
3. B. Bradford
4. D. Brain
5. D. Burch
6. G. Burhance
7. E. Cardwell
8. T. Cole
9. C. D'Elia
10. M. DeHoyos
11. G. Delisle
12. A. Donato
13. H. Downing
14. J. Dunleavy
15. P. Espitee
16. R. Farrell
17. C. Fletcher
18. M. Flynn
19. P. Flynn
20. T. Flynn
21. W. Flynn
22. J. Foshay
23. A. Gant
24. F. Gilbert
25. D. Gold
26. L. Greany
27. D. Guay
28. R. Gustafson, Jr.
29. R. Gustafson, Sr.
30. M. Halliwell
31. R. Hill
32. C. Hills, Jr.
33. G. Hipp
45. M. McLaughlin
46. J. Meyer
47. F. Miller
48. H. Miller
49. J. Miller
50. M. Miner
51. R. Miner
52. V. Mourning
53. R. Munday
54. W. Murphy
55. L. Nephew
56. A. Nicholle
57. C. Parker
58. R. Peck
59. F. Peet
60. J. Perriera
61. O. Pond
62. W. Pond
63. S. Pond
64. R. Raymunt
65. J. Redfearn
66. C. Rizzo
67. R. Rizzo
68. B. Roache
69. H. Rothe
70. L. Rothstein
71. G. Scales, Jr.
72. R. Schilke
73. G. Schroeder
74. H. Sommerville
75. A. Stack
76. D. Tanner
77. L. Terhune

34. R. Husband
35. J. Inness
36. R. Jones
37. A. Josselyn
38. W. Krusky
39. E. Kuhne
40. C. Larson
41. G. Leblanc
42. R. Martinez
43. C. McGavic
44. L. McGavic
78. G. Tucci
79. S. Turner
80. C. Vanderhoef
81. R. Waugh
82. S. Welwood
83. F. Williams
84. T. Williams
85. J. Woodrow
86. G. Zack
87. R. MacKenzie
88. G. Peck

APPENDIX B

The Union's Majority as of June 22, 1977

1. James R. Dunleavy
2. Richard M. Peck
3. F. Williams, Jr.
4. George H. Hipp
5. M. B. DeHoyos
6. Elliott R. Kuhne
7. Lee Rothstein
8. Randall Raymunt
9. David J. Gold
10. Lester E. Nephew
11. Gregory Zack
12. Dennis Tanner
13. A. Donato
14. George Tucci
15. Harry Rothe
16. Robert Jones
17. Conrad D'Elia
18. Arthur F. Stack
19. Bill Baucom
20. Patricia Flynn
21. Roena Schilke
22. J. M. Perriera
23. Charles H. Larson
24. George Leblanc
25. Frank Peet
26. Richard Rizzo
27. Bruce P. Roache
28. Duane L. Burch
29. Wyatt Flynn
30. Olington S. Pond
31. Stuart W. Pond
32. James Refearn
33. Sydney Turner
34. Burton S. Bradford
35. Arthur G. Nicholls
36. Francis E. Miller
37. Veronica Mourning
38. Thomas Williams
39. R. Munday
40. H. H. Downing, Jr.
41. Richard T. Farrell
42. George Scales, Jr.
43. Allen L. Gant
44. Wellington W. Pond
45. Donald Brain
46. George R. Burhance
47. Michael B. McLaughlin
48. Ronald Mackenzie
49. Foster Gilbert
50. Richard Gustafson, Jr.
51. Carol Rizzo

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to give evidence, the National Labor Relations Board has again found that we violated the National Labor Relations Act, as amended, and has ordered us to post this notice. We intend to abide by the following.

The Act gives all employees these rights.

To engage in self-organization

To form, join, or help unions

To bargain collectively through representatives of their own choosing

To act together for purposes of collective bargaining or other mutual aid or protection

To refrain from any or all these things.

WE WILL NOT coercively interrogate our employees about their, or other employees', union activities or desires.

WE WILL NOT discourage activity on behalf of Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, or any other labor organization, by imposing more onerous conditions of employment, discharging, or otherwise discriminating against employees in any manner with respect to their tenure of employment of any condition of employment.

WE WILL NOT promise or grant benefits or improvements in terms and working conditions or announce such benefits or improvements to employees in order to discourage them from supporting the Union, or any other labor organization.

WE WILL NOT warn employees that if they sign authorization cards for the Union, or any other labor organization, that they will be required to testify at a trial or other proceeding.

WE WILL NOT threaten, or impliedly threaten, employees with plant closure, discharge, discipline, loss of employment, loss of benefits, or harsher conditions of employment, or other economic reprisals because the Union succeeds in its organizing activity, to discourage them from supporting the union, or any other union.

WE WILL NOT maintain or give effect to, enforce, or apply any rule prohibiting our employees, when they are on nonworking time, from distributing handbills, leaflets, or similar literature relating to concerted activities protected by Section 7 of the National Labor Relations Act, as amended, in nonworking areas of our plant premises.

WE WILL notify employees Sidney Turner and Lester Nephew that they have permission to sit on a bench or table alongside production line 5, so long as the production line is operating properly, and to the same extent they were permitted to do so prior to the discrimination against them in December 1977.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their Section 7 rights.

WE WILL compensate the Union and the Board for their expenses in investigating, preparing for, and conducting this case, with interest, and WE WILL compensate the Union for any excess expenses incurred during the organizational campaign at New Milford, Connecticut, with interest.

WE WILL, on request, recognize and bargain in good faith with Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, as the exclusive representative of all employees in the appropriate unit set forth below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a written signed agreement. The appropriate unit is:

All production and maintenance employees, including shipping and receiving and quality control employees of J. P. Stevens & Company, Inc., employed at its New Milford, Connecticut, plant, ex-

clusive of all other employees, guards and all supervisors as defined in Section 2(11) of the Act.

WE WILL grant employee Ronald MacKenzie immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges and make him whole for any loss of earnings or benefits connected with his employment status which he may have suffered because of our discrimination against him.

WE WILL send to all our employees copies of this notice, with an explanatory letter; WE WILL read this notice to all our employees; and WE WILL grant the Union, as ordered, access to our bulletin boards, access to our nonwork areas, speaking opportunities, and lists of the names and addresses of our employees at many of our plants.

J. P. STEVENS & CO., INC.

APPENDIX D

Dear Stevens Employees:

This letter, and the enclosed notice, is being sent to all J.P. Stevens employees to inform you of a recent decision by the National Labor Relations Board[50] relating to the Stevens facilities in New Milford, Connecticut.

The Amalgamated Clothing & Textile Workers Union of America, AFL-CIO-CLC, has been trying to organize the New Milford hourly employees for the purpose of having them select that Union as their collective-bargaining representative. After a hearing, the National Labor Relations Board found that the Company interfered with, restrained, and coerced employees in the exercise of their rights under the National Labor Relations Act.

As you can see from the enclosed notice, the Company has promised that, in the future, we will comply in good faith with the labor law.

SINCERELY YOURS

(PLANT MANAGER)

[50] If the Board's Order is enforced by a court of appeals, insert at this point, "approved by a United States Court of Appeals."

SUPPLEMENTAL DECISION PURSUANT TO REMAND

LEONARD M. WAGMAN, Administrative Law Judge: On April 25, 1980, I issued my Order and Decision in this case. I found, *inter alia*, that J. P. Stevens & Co., Inc., the Company, had violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, the Union, as the exclusive collective-bargaining representative of a unit of employees at its New Milford, Connecticut, plant.

On September 22, 1980, the National Labor Relations Board issued a Decision and Order remanding the proceeding and ordering that further hearing be conducted "for the purpose of adducing further evidence on the question of authentication of the signatures . . . purporting to be those of employees David J. Gold, Frank Peet, Wellington Pond, Gregory Zack, Patricia Flynn, Dennis Tanner, Roena Schilke, Richard Rizzo, Bruce Roach, George Tucci, George H. Hipp, Michael B. DeHoyos, Elliott R. Kuhne, Randall Raymunt, A. Donato, J. M. Perriera, Charles H. Larson, and George LeBlanc" (Bd. D & O), all of whose names appeared on the petition on which the Union based its demand for recognition. Pursuant to the remand, I held a hearing at Danbury, Connecticut, on October 28, 1980. From the evidence received at the hearing and upon consideration of the briefs submitted by the General Counsel, Respondent, and the Charging Party, I make the following findings of fact, conclusions of law, credibility resolutions, and recommendations.

I. PRELIMINARY STATEMENT

In addition to determining the authenticity of the signatures at issue, I have construed the remand to include consideration of their validity as designations of the Union as bargaining representative. Thus, as the petition's sole stated purpose was to designate the exclusive bargaining representative of the signatories, I have applied the Board's *Cumberland Shoe* doctrine.[1] Citing that doctrine with approval, the Supreme Court in *NLRB v. Gissel Packing Co.*[2] noted that *Cumberland Shoe* established the rule that an unambiguous single purpose designation will be counted unless it can be shown that the employee was told by the solicitor that the card was to be used *solely* for the purpose of obtaining an election. As the Court pointed out:

> . . . employees should be bound by the clear language of what they sign unless that language is deliberately and clearly concealed by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature.[3]

II. FINDINGS

A. *Authenticity*

Each of the 18 employees named in the remand credibly testified, without contradiction, and identified their respective signatures on the Union's petition. Accordingly, I find that the following employees signed the petition at the Union's Harry Brook Park meeting: David J. Gold, Frank Peet, Wellington Pond, Gregory Zack, Patricia Flynn Danzy,[4] Dennis Tanner, Rowena Schrilke,[5] Richard Rizzo, Bruce Roache,[6] George Tucci, George

[1] *Cumberland Shoe Corp.*, 144 NLRB 1268 (1963).

[2] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

[3] *Id.* at 606.

[4] The name appearing on the petition and in the Board's remand order is Patricia Flynn. Flynn is now married and her named is Patricia Flynn Danzy.

[5] The name appearing on the remand order is incorrectly spelled "Roena Schilke."

[6] The name appearing on the remand order is incorrectly spelled "Roach."

H. Hipp, Michael B. DeHoios,[7] Elliott R. Kuhne, Randall Raymunt, A. Donato, J. M. Perriera, Charles H. Larson, and George LeBlanc.

B. *Validity*

J. M. Perriera: Perriera first testified on cross-examination that he thought the petition would be given to the plant manager because that was the only way an election would be held. He also testified on redirect examination that it was his understanding that the only reason for the petition was to show that the "workers wanted to be union." When pressed again on cross-examination Perriera agreed that the person who solicited his signature told him the petition would be used only for an election. As Perriera's responses on cross-examination do not invalid his card, I shall count it. *Crawford Mfg. Co.*, 161 NLRB 989, 990 (1966).

George Tucci: Tucci testified that he read the petition before signing it. He also testified that although he did not remember what if anything was said to him before signing, he did not remember any discussion about an election. Accordingly, I find Tucci's signature valid.

Wellington Pond: Pond testified that although he only read the petition up to a point before signing, he understood what he was signing. Pond could not recall if there was any conversation about an election. Accordingly, I find Pond's signature valid.

George Hipp: On cross-examination, Hipp agreed that the person who solicited his signature told him the only purpose of the petition was for an election. However, on redirect examination, Hipp testified credibly that he was told that the petition was "for an election," and that no one told him that it was only for that purpose. Therefore, I find Hipp's signature valid.

David J. Gold: Gold testified that he read the petition before signing it. Gold also testified that the petition was read aloud and that the union representative told the assemblage that those who signed the petition agreed to have the Union as their representative agent. Accordingly, I find Gold's signature valid.

Charles Larson: Larson testified that he read the petition before signing it. Larson also testified that he could not recall what if anything was said about an election. Larson also testified that he signed both the blue card and the petition at the same time. He could not recall the sequence of the signatures. I find that Larson's signature is valid.

Rowena Schrilke: Schrilke testified that although she did not read the petition before signing it, she "knew it was for the Union." Schrilke also testified that no one told her that the petition would only be used for an election. I find Schrilke's signature valid.

Michael DeHoios: DeHoios testified that he read the petition before signing it. DeHoise also testified that he did not recall any conversation about an election. Accordingly, I find DeHoios' signature valid.

Frank Peet: Peet testified that he read the petition before signing it. Peet also testified that he did not recall anyone discussing an election with him. I find Peet's signature valid.

Gregory Zack: Zack testified that he read the petition before signing it. Zack also testified that "[N]othing was said about holding an election." Accordingly, I find Zack's signature valid.

A. Donato: Donato testified that he read the petition before signing it. Donato also testified that he did not recall if anything was said to him before he signed the petition. I find Donato's signature valid.

Elliott R. Kuhne: Kuhne testified that he read the petition before signing it. Kuhne also testified that he did not recall any statement about an election. I find Kuhne's signature valid.

George LeBlanc: LeBlanc testified that the petition was read to him before he signed it. LeBlanc also testified that an election was brought up. He also credibly testified that the union solicitor asked the employees to sign the petition if they "wanted to have a union represent us. And I wanted one, so I signed the petition." Accordingly, I find LeBlanc's signature valid.

Bruce Roache: Roache testified that he read the petition before signing it. Roache also testified that the petition was read aloud before being circulated. Roache also stated that he signed the blue card at the same time as the petition, but could not recall the sequence of the signatures. I find Roache's signature valid.

Dennis Tanner: Tanner testified that he read the petition before signing it. Tanner also testified that he did not recall any statements about an election. I find Tanner's signature valid.

Patricia Flynn Danzy: Danzy testified that the petition was read aloud before she signed it. She also testified: "All I know, is that we were signing a petition for the Union to represent us at J. P. Stevens Corporation." I find Danzy's signature valid.

Richard Rizzo: Rizzo testified that he read the petition before signing. Rizzo also testified that he did not recall whether anything was mentioned about an election. Accordingly, I find Rizzo's signature valid.

CONCLUSIONS OF LAW

1. It is found that the signatures on the union petition purporting to be those of David J. Gold, Frank Peet, Wellington Pond, Gregory Zack, Patricia Flynn Danzy, Dennis Tanner, Rowena Schrilke, Richard Rizzo, Bruce Roache, George Tucci, George H. Hipp, Michael B. DeHoios, Elliott R. Kuhne, Randall Raymunt, A. Donato, J. M. Perreira, Charles Larson, and George LeBlanc are in fact signatures of said employees.

2. It is also found that the following are valid signatures for determining the Union's status as of June 22, 1977: David Gold, Frank Peet, Wellington Pond, Gregory Zack, Patricia Flynn Danzy, Dennis Tanner, Rowena Schrilke, Richard Rizzo, Bruce Roache, George Tucci, George H. Hipp, Michael B. DeHois, Elliott R. Kuhne, Randall Raymunt, A. Donato, J. M. Perreira, Charles Larson, and George LeBlanc.

3. All of the Conclusions of Law recited in the Administrative Law Judge's original Decision in this case are reaffirmed.

[7] The name appearing on the remand order is incorrectly spelled "DeHoyos."

ORDER

It is recommended that the previous order recommended by the Administrative Law Judge in his original Decision be adopted by the Board.